रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 26] नई दिल्ली, जुलाई 19—जुलाई 25, 2020, शनिवार/ आषाढ़ 28—श्रावण 3, 1942
No. 26] NEW DELHI, JULY 19—JULY 25, 2020, SATURDAY/ ASADHA 28— SRAVANA 3, 1942

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत और पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 16 जुलाई, 2020

का.आ. 560.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री रवि भूषण शर्मा, अधिवक्ता को, दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) की ओर से केन्द्रीय अन्वेषण ब्यूरो वाद आरसी.1(ए)/1987-एसीयू-1/एससी-1/ नई दिल्ली (एस.एस आहलूवालिया और अन्य) के विचारण को संचालित करने के लिए और उससे संबंधित या उसके

आनुषंगिक मामलों के लिए, नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या मामले का निपटारा होने तक, इनमें से जो भी पहले हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/03/2020-ए.वी.डी.-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 16th July, 2020

S.O. 560.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Ravi Bhushan Sharma, Advocate as Special Public Prosecutor for conducting trial of CBI case RC 1(A)/1987-ACU-I/SC-I/New Delhi (S.S. Ahluwalia & others), on behalf of Delhi Special Police Establishment (CBI) and for matter connected therewith or incidental thereto for a period of three years from the date of appointment or till the disposal of the case, whichever is earlier.

[F. No. 225/03/2020-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 20 जुलाई, 2020

का.आ. 561.—केंद्रीय सरकार, दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, श्री के. पी. सिंह, अधिवक्ता को, विशेष न्यायाधीश, केंद्रीय अन्वेषण ब्यूरो, II-लखनऊ के विचारण न्यायालय में दिल्ली विशेष पुलिस स्थापन (केन्द्रीय अन्वेषण ब्यूरो) द्वारा संस्थित वाद सं. आरसी.9(एस)/2002/सीबीआई/एससीआर/नई दिल्ली, (सी.सी.सं.331/2004) सीबीआई बनाम मन्ना लाल और अन्य में तथा उससे संबंधित और उसके आनुषंगिक अन्य मामलों के विचारण का संचालन करने के लिए नियुक्ति की तारीख से तीन वर्ष की अवधि के लिए या अगले आदेश तक, इनमें से जो भी पूर्वतर हो, विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/17/2019-ए.वी.डी.-II]

एस.पी.आर. त्रिपाठी, अवर सचिव

New Delhi, the 20th July, 2020

S.O. 561.—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Shri K.P. Singh, Advocate as Special Public Prosecutor for conducting trial of the case No. RC9(S)/2002/CBI/SCR/New Delhi (CC. No.331/2004) CBI Vs. Manna Lal & others instituted by the Delhi Special Police Establishment (C.B.I.) in the Trial Court of Special Judge, CBI-II Lucknow and any other matters connected therewith and incidental thereto for a period of three years from the date of engagement or until further orders, whichever is earlier.

[F. No. 225/17/2019-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 27 मई, 2020

का.आ. 562.—केंद्र सरकार, एतद्द्वारा, भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 की संख्या 55) की धारा 3 द्वारा प्रदत्त शक्तियों का उपयोग करते हुए, श्री के. विनायक राव को भारतीय विमानपत्तन प्राधिकरण में सदस्य (वित्त), 1,80,000 - 3,40,000/- (संशोधित) के वेतनमान पर 13 मई, 2020, पूर्वाह्न से

उनकी अधिवर्षिता की तारीख तक, अर्थात 31.10.2022, या अगले आदेशों तक, इनमें से जो भी पहले हो तत्काल संविलियन आधार पर नियुक्त करती है।

[फा. सं. एवी-24011/1/2019-भाविप्रा-नाविम]

नरेंद्र सिंह, अवर सचिव

MINISTRY OF CIVIL AVIATION

New Delhi, the 27th May, 2020

S.O. 562.—In exercise of the powers conferred by Section 3 of the Airports Authority of India Act, 1994 (No.55 of 1994), the Central Government hereby appoint Shri K. Vinayak Rao to the post of Member (Finance), Airports Authority of India on immediate absorption basis in the scale of pay of ₹ 1,80,000 - 3,40,000/- (revised) with effect from the forenoon of 13th May, 2020 till the date of his superannuation, i.e. 31.10.2022, or until further orders, whichever is earlier.

[F. No. AV-24011/1/2019-AAI-MOCA]

NARENDRA SINGH, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 13 जुलाई, 2020

का.आ. 563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ़ूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 1/2019) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-22011/6/2018-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 13th July, 2020

S. O. 563.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour-Court Chennai, as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 07.07.2020.

[No. L-22011/6/2018-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

ID No. 1/2019

Present: DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER
Date: 16.03.2020

The General Secretary
Food Corporation of India Workers Union
No. 58/1, Diamond Harbour Road
Kolkata : 1st Party/Petitioner Union

AND

1. The General Manager (Region)
Food Corporation of India
No. 8, Mayor Sathyamoorthy Road
Chetpet
Chennai-600031 : 2nd Party/1st Respondent

2. The Area Manager
Food Corporation of India
District Office
Coimbatore -641001 : 2nd Party/2nd Respondent

Appearance:

For the 1st Party/Petitioner Union : None

For the 2nd Party/1st & 2nd Respondent : Advocate M/s. M. Imthias & M. Vijaya Kumar

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22011/6/2018-IR(CM-II) dtd. 26.11.2018 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is:

"Whether the action of the Management of FCI, Peelamedu in transferring 24 DPS labourers (copy enclosed) working at FSD Peelamedu as a process of "Rationalization" is legal and justified?? If not, to what relief the 24 DPS Labourers of FSD Peelamedu are entitled to?"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 1/2019 and notices were issued to both the parties for their appearance fixing the case to 12.02.2019. Since then, the case is dragged for such a long period till 06.03.2020 intervening almost 9 adjournments i.e. 7 adjournments in the year 2019 viz. 23.04.2019, 28.05.2019, 02.07.2019, 22.07.2019, 27.08.2019, 01.05.2019, 19.11.2019 and 2 adjournments in the year 2020 i.e. 04.02.2020 and 06.03.2020. It appears even if for the interest of justice the Tribunal suo-moto afforded sufficient opportunities to the Petitioner's Union (represented through the General Secretary). No progress the proceeding was noticed. Neither the Authorized Representative, the General Secretary on behalf of the Union nor anyone on behalf of the Petitioner Union appeared before this Tribunal.

Thus, it is held that the neither the Petitioners individually nor being represented through the General Secretary of the Union are interested to proceed with their Claim raised in the dispute in view of the reference. The non-appearance and non-participation in the proceeding by the Petitioners or their Authorized Representative, constrained the Tribunal not to repost the proceeding to any other date for the same purpose.

In view of the discussion held in preceding paragraph, it deems there exists no dispute for adjudication as referred by the Appropriate Government.

In the result the ID stands dismissed.

An Award is passed accordingly.

(Dictated and transcribed by PA and corrected and
pronounced in the open court on this day the 16th March, 2020)

DIPTI MOHAPATRA, Presiding Officer

नई दिल्ली, 13 जुलाई, 2020

का.आ. 564.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स केंद्रीय रेशम बोर्ड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या सीआर 02/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-42012/197/2003-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 13th July, 2020

S. O. 564.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 02/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s. Central Silk Board and their workmen, received by the Central Government on 07.07.2020.

[No. L-42012/197/2003-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19TH JUNE, 2020

PRESENT: JUSTICE SMT. RATNAKALA, Presiding Officer

CR 02/2005

I Party	**II Party**
Sh. N. Rajkumar, S/o T. Nagaraj, No. 26, 10th Cross, Manjunathnagar, Magadi Road Bangalore - 560023.	The Member Secretary, Central Silk Board, CSB Complex, 5th Floor, Madiwala, Bangalore – 560068.

Appearance

Advocate for I Party : Mr. S. Ramesh

Advocate for II Party : Mr. N. S. Narasimha Swamy

AWARD

The Central Government vide Order No. L-42012/197/2003-IR(CM-II) dated 06.12.2004 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of Central Silk Board, Bangalore in terminating the services of Sh. N. Rajakumar, Ex-Driver w.e.f. 14.03.2000 is legal and justified? If not, to what relief the workman is entitled?"**

1. The 1st Party workman is challenging the order passed by the 2nd Party in terminating him from service as a measure of punishment after the charges against him came to be proved in a Departmental Enquiry.

He was appointed as Driver with the 2nd Party w.e.f. 29.05.1990; he was transferred to Seed Cocoon Procurement Centre, NSSP, CSB Gorantla, Andhra Pradesh vide order dated 29.07.1998; he could not report to duty due to family and personal problems. He pleaded for a transfer to Bangalore. Without considering his representation the 2nd Party issued show-cause notice followed by charge sheet which culminated into Departmental Enquiry.

The workman assails the procedure of enquiry adopted by the Enquiry Officer for not affording him opportunity to contest the charges. He contends that Enquiry Report is drawn on surmise and conjuncture without considering the defence. The Disciplinary Authority mechanically accepted the Enquiry Report and imposed maximum penalty of removal from service. The action of the 2nd Party in imposing such a harsh punishment is without any basis and a clear case of victimization and unfair labour practice. After his removal he is unemployed and finding it hard to maintain himself and his family.

2. The 2nd Party while seeking to justify the action taken against the workman have denied all the allegations levelled in the claim statement in respect of procedure adopted by the Enquiry Officer, Enquiry Report and the punishment order.

3. On the basis of rival pleadings touching the fairness of the Domestic Enquiry a Preliminary Issue was raised, tried and adjudicated by upholding the fairness and correctness of the Domestic Enquiry vide order dated 08.05.2012.

4. The 1st Party workman has adduced evidence about his unemployment and has attempted to produce additional documents (Medical Records) in respect of the period 01.08.1998 to 30.05.1999 to establish his bonafides in remaining absent.

During the enquiry 1st Party / DGO was assisted by his representative.

5. The charge sheet dated 25.05.1999 was accompanied with the imputation of misconduct, the allegation was to the effect that,

he was transferred from Silk Worm Seed Production Centre, Bangalore vide order dated 29.07.1998 of Director, National Silkworm Seed Project, Bangalore but he did not report to duty at the transferred place, after his relief at SSPC Bangalore on 31.07.1998 and remained absent unauthorizedly w.e.f. 01.08.1998 causing serious dislocation in office work at SCPC, Gorantla. He showed utter insubordination to administrative orders; the headquarters had to make alternative arrangements for transportation at SCPC Gorantla, by deploying drivers from Basic Seed Form, Parigi. The above misconduct contravenes Rule 3(1) (ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

6. The effective enquiry hearing was held on 01.11.1999 prior to that copies of all the Records relied by the Management were supplied to the workman for his perusal (PE-1 to PE-18). None of the documents were disputed by the defence, it was submitted from his side that he did not absent himself from duty unauthorizedly, on health ground he had requested for sanction of leave and had submitted a Certificate issued by a Civil Surgeon of the Government Hospital. The counter submission from the Presenting Officer was, he had not produced authenticated original Medical Certificate for his absence; as per CCS (Leave) Rules 1972, Rule No. 19 which contemplates -

i) An application for leave on medical certificate made by

ii) A non-gazetted government servant shall be accompanied by MC in Form 4 given by an AMA or RMP, defining as clearly as possible the nature and probable duration of illness.

Though the DGO did not dispute that his application was not in accordance with Rule 19, his submission was if the office had called upon original MC from him, same would have been submitted.

On that the Presenting Officer produced the applications for sanction of commuted leave submitted by him dated 25.09.1995, 06.05.1996 and 05.08.1996 to establish that he was in the habit of availing leave by submitting proper applications and MC in original. Those documents were taken on record as PE-19 to PE-21. The adamant stand of the DGO was if the MC is to be produced now with a request to sanction the leave, same will be submitted. It was also shown that the Xerox Copies of the MC submitted by the DGO were received up to 11.02.1999 and thereafter no proper application or MC was submitted by him. It was maintained by the defence that his absence was not unauthorised he kept the office informed of his ill health, so also his inability to attend the office, production of MC and other matter should have been taken up by the office by issuing necessary direction to him from time to time. Since, no information regarding sanction of leave on his earlier application was received, he could not send any leave application from 12.02.1999, since no purpose would be served; further the office had already issued show-cause notice to him on 12.04.1999.

7. At the end of the enquiry the Enquiry Officer questioned him.

Whether are you ready even now to report for duty at SCPC, Gorantla?

The answer was,

I have explained my position in my representation dated 01.08.1998 which has not been considered sympathetically. It is not possible to report at Gorantla on account of health reasons and I have to look after my father who is aged. I request again that my case may be considered sympathetically.

8. Enquiry was concluded with an understanding that DGO would submit his written brief within 15 days of receipt of copy management brief. Though the written brief submitted by the Presenting Officer was marked to him, he did not submit his counter reply. No wonder that the Enquiry Officer on the basis of the undisputed documents and oral submissions found that *as per Rule 7 of CCS (Leave) Rules 1972, leave cannot be claimed as of right – the DGO did not submit original medical certificate along with his leave application while applying for leave knowing that his application should be accompanied by original medical certificate.*

Though advised on several occasions by office to report for duty at his new place of posting through repeated Telegrams / Memorandum / Show-Cause Notice (Ex PE-4, PE-5, PE-7, PE-11, PE-12 and PE-14 to PE-17) he did not care to follow Administrative instructions of office as contained therein and used to telegrams / letters (Ex PE-6, PE-8 and PE-13) without any Medical Certificate.

DGO submitted copy of the Medical Certificate up to 11.02.1999 but not thereafter... ...

Vide Ex PE-4 (a) and (b) and PE-13 he intimated the office that he would report for duty at SCPC, Gorantla after recovery from his ill health but till date he did not report..... in utter insubordination to office orders / instruction. The reply given by him to the Investigating Officer confirms his attitude of insubordination towards office orders / instructions. Non-submission of replies to the written briefs of the Presenting Officer also establishes that he has nothing to offer than to accept his guilt / misconduct as framed against him.

Thus, the Enquiry Officer found that the charges are proved and he failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant thereby contravene Rule 3(1) (ii) and (iii) of Central Civil Services (Conduct) Rule, 1964.

9. In his remark to the Enquiry Report the DGO reiterated the stand taken by him earlier; he made allegations against the Superior Officers /Director NSSP that he had developed ill will against him and further alleged that he is discriminated by retaining others Drivers at Bangalore only.

10. The Disciplinary Authority vide its considered order upheld the enquiry report, recorded that

i) Assistant Director, SCPC, Gorantla and NSSP Directorate directed him several times to report at his new place of posting – and informed about non-consideration of his request for leave – directed to report for duty forthwith and he did not adhere to the instructions / orders of his superiors which shows his absolute disobedience to his administrative orders.

ii) His duty confines to limited area and not for exposure to dust.

iii) He had submitted leave application after a lapse of 10 months from August 1998 and thereafter he did not submit any leave application.... The act amounts to unauthorized absence from duty.

He was transferred to SCPC, Gorantla, in public interest to meet the critical situation of transportation and supply of seed cocoons to all major SSPCs of southern states – his staying away from duty caused severe inconvenience and NSSP Directorate was forced for alternate arrangements of deployment of Drivers from other units.

Thus, agreeing with the Report of the Enquiry Officer, Disciplinary Authority proceeded with the punishment order "*Removal from Central Silk Board's Service which shall not be a disqualification for future employment under the Government" as provided under Rule 11 (viii) of Central Civil Services (Classification, Control and Appeal) Rules 1965*.

11. The enquiry finding is based on uncontroverted records and also the demeanour of the 1st Party during the enquiry, since he was not agreeable to report to the transferred place even at that point of time also. He has not only exhibited insubordination and utter disregard to the administrative order but also made unfounded allegations against his own superiors in his remarks in respect of Enquiry Report submitted to the Disciplinary Authority. Before this Tribunal he has made attempt to produce additional evidence by producing Photostat copy of so-called Medical Certificates but this is not an Appellate Court enjoying the jurisdiction to receive additional evidence. Neither the Enquiry Report nor the orders of the Disciplinary Authority suffer with any legal flaws and the action taken against him by removing him from service w.e.f. 14/14.03.2000 is legal and justified and the punishment order commensurates with the misconduct proved, in the light of the nature of the defence taken by him. No mitigating circumstance is shown by him to intervene in exercise of jurisdiction under Sec 11-A of 'the Act'.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 19th June, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 जुलाई, 2020

का.आ. 565.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या सीआर 22/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-22011/9/2010- आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 13th July, 2020

S. O. 565.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CR 22/2010) of the Cent.Govt.Indus.Tribunal-cum-Labour, Bangalore as shown in the Annexure, in the industrial dispute between the management of M/s. Food Corporation of India and their workmen, received by the Central Government on 07.07.2020.

[No. L-22011/9/2010-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26TH MAY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 22/2010

I Party	**II Party**
The Regional Secretary, FCI Executive Staff Union, Karnataka Region, C/o FCI District Office, K. R. Puram Complex, Vijinapura, Bangalore - 560016.	The Area Manager, Food Corporation of India, District Office, K. R. Puram Complex, Vijinapura, Bangalore - 560016.

Appearance

Advocate for I Party : Ms. G. Chandrakala

Advocate for II Party : Mr. B. L. Sanjeev

AWARD

The Central Government vide Order No. L-22011/9/2010-IR(CM-II) dated 08.06.2010 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

"Whether the action of the management of FCI, District Office, K.R. Puram Complex, Vijinapura, Bangalore, Karnataka in imposing the punishment of censure and recovery of Rs. 40,622/- to be recoverable in 50 equal instalments commencing from the salary of June, 2006 on Sh. V. Gangulappa, Asst. Grade-III is legal and justified? To what relief is the workman entitled for?"

1. The 1st Party Union is challenging the punishment imposed on Sh. V. Gangulappa working as Assistant Grade-III in the 2nd Party at Krishnapuram Godown. It is claimed that the workman was issued a memorandum dated 12.12.2005 along with statement of imputation, the workman submitted his reply denying

the allegation; the 2nd Party without considering his objection and without holding enquiry imposed the punishment of reduction of pay by one stage for one year and ordered recovery of Rs. 83,130/-. But the punishment order is totally unjustified, he has not committed any misconduct, the Appellate Authority modified the order to the extent of recovery of Rs. 40,622/-. The Appellate Authority in its order dated 21.11.2006 referred to the report of a Committee set up by him, the order of the Appellate Authority is without application of mind and without proper appreciation of the ground urged in the appeal; the Review Authority rejected his review petition without appreciating the documents.

2. The 2nd Party in their counter statement justified the action taken against the workman and denied all the averments made in the claim statement.

3. Both parties adduced evidence. Ex W-1 to Ex W-12 for the 1st Party and Ex M-1 to Ex M-6 for the 2nd Party are marked in evidence. Both parties have submitted their respective oral / written argument.

4. The witness examined for the 1st Party is its Former Union Regional Secretary who claimed that he is authorised to prosecute the matter.

The 2nd Party has produced the copy of the memo along with statement of imputation of misconduct served on the 1st Party (Ex M-1 and Ex M-2) and the Report of the Vigilance Committee; the orders passed by Disciplinary Authority and the Review Authority.

5. Without pondering over the truthfulness or otherwise of the allegation made against the 1st Party workman what needs to be dealt at the outset is, even after the concerned workman had denied the allegations, the legality of imposing punishment without holding an enquiry into the charges.

6. The order vexed is passed by the Appellate Authority. In its Appellate jurisdiction, the Authority modified the punishment order passed by the Disciplinary Authority i.e. "*reduction to a lower stage in the time scale of pay for a period of one year without cumulative effect and recovery of Rs. 40,622/- (Rupees Forty Thousand Six Hundred and Twenty Two Only) suffered by the Corporation proportionately recoverable in 60 equal instalments*" to that of '*CENSURE' and recovery of Rs. 40,622/- (Rupees Forty Thousand Six Hundred and Twenty Two Only)*. As such no evidence is led demonstrating financial loss to the Corporation and nothing is shown by the 1st Party that the punishment of censure has snatched away his promotional opportunity.

7. The Apex Court in its judgment reported in (2001) 9 SCC 180 in the matter of O K Bhardwaj Vs Union of India and others observed that *"....even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with."* Our Hon'ble High Court in a Writ Petition No. 23930/2002 (S-DE) filed by an employee of very same Food Corporation of India who was imposed penalty of withholding three increments and recovery of Rs. 53,536.39, quashed the punishment order following the judgment of the Apex Court in the matter of O K Bhardwaj (supra), since before imposing the punishment order enquiry was not held. However, 2nd Party was given liberty to hold enquiry and thereafter take appropriate decision in the matter. The writ petitioner therein was also given liberty to set up such defences as may be open to him when the Respondents order the Domestic Enquiry.

8. In the case on hand, the Appellate Authority before intervening in the order of the Disciplinary Authority, constituted a Committee (Vigilance Committee) to examine the case so as to determine the intent and role of the Official involved in the case. On submission of the Report by the Committee the punishment order now under dispute is passed. It is not shown that the 1st Party workman was subjected to trail on specific charges by Vigilance Committee; it is also not the case that before accepting the Vigilance Report the 1st Party workman had the opportunity of his say to the said Report. Definitely the order in question is one sided and violative of the principles laid down by the Apex Court. Though Rule 60 of the Food Corporation of India (Staff) Regulations, 1971 provide for the imposition of minor penalty without holding enquiry. The punishment order since have financial implication on his income for a long time, it requires detailed enquiry into the charges by affording opportunity to the workman. Hence, the action of the management is not legal and not justified.

9. The allegation pertains to the shortage noticed in the Godown during October 2005. At this length of time no purpose could be served by initiating an enquiry into the allegation of misconduct said to have been committed in the year 2005. In the circumstances, it is required that the 2nd Party if have recovered any amount from the salary of the 1st Party workman in view of the order passed by the Appellate Authority / General Manager (Karnataka) vide its order dated 21.11.2006 shall refund the same to the workman.

AWARD

The Reference is accepted.

The action taken by the Management of FCI, District Office, K.R. Puram Complex, Vijinapura, Bangalore, Karnataka in imposing the punishment of censure and recovery of Rs. 40,622/- against 1st Party workman Sh. V Gangulappa / Asstt. Grade-III is illegal and not justified.

Any recoveries made from the salary of the 1st Party workman shall be refunded forthwith to the workman by the 2nd Party.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 26th May, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 13 जुलाई, 2020

का.आ. 566.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एम.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण – सह - श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 30/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-22012/184/2011-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 13th July, 2020

S. O. 566.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the Management of M/s. M.C.L. and their workmen, received by the Central Government on 07.07.2020.

[No. L-22012/184/2011-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 30 OF 2012

Dated, Bhubaneswar the 19th March, 2020

Present: Shri B.C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

Between:

1. The General Manager,
Orient Area, MCL, PO. Brajarajnagar,
Distt. Jharsuguda (Odisha) – 768216.

2. The Chairman cum Managing Director,
Mahanadi Coalfields Ltd., Jagruti Vihar,
Burla, Sambalpur. ...First party managements

AND

Sri Jnanendra Prasad Panda
S/o. Late Haribandhu Panda
At/PO. Rangali, Sambalpur. ...Second party workman

Appearances:

Sri A. Sikdar, Advocate : For first party managements

Sri Susant Dash, Advocate : For second party workman

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-22012/184/2011 IR(CM-II)) dated 27.01.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action of the management of Mahanadi Coalfields Ltd., Sambalpur in removing the services of Shri Jnanendra Prasad Panda is legal and justified ? To what relief the workman concerned is entitled ?"

2. The case of the second party workman as emerging from his statement of claim is that he was appointed as an apprentice and he was later promoted to the post of 'Welder' in the year 1983. He completed 27 years of service in the establishment of management without any adverse communication till he was removed from service on 17.3.2010. He was falsely implicated in a criminal case and taken into custody of police on 12.6.98 along with some others. Later he was released on bail in the said criminal case. He faced trial being implicated in the criminal case in S.T. Case No. 343/1999 in the Court of Sessions Judge, Sambalpur. Since he and others were convicted in the trial for an offence of murder, he was punished with life imprisonment and he was taken into custody. According to him, he had preferred an appeal before the Hon'ble High Court against his conviction and he was granted bail by the Hon'ble Court on 15.2.2009 during the pendency of the criminal trial. It is his claim that a departmental proceeding was initiated against him in the year 2007 wherein he was charged for his unauthorized absence from duty from 5.1.2007 onwards. He was not served with copy of charge sheet in the departmental proceeding and invited to submit show cause. Since he was in jail custody from 5.1.2007 to 15.2.2009, he could not report to his duty and his absence was not intentional. But, the management dismissed him from service for his alleged unauthorized absence from duty without giving him an opportunity of being heard and without holding a departmental enquiry in conformity to the principles of natural justice and procedure as laid down in the Certified Standing Order of the management Company. He was not invited to submit second show cause notice as well as he was not served with any enquiry report before his dismissal with effect from 17.3.2010 on the ground of misconduct of unauthorized absence from duty. Since his dismissal without holding a proper enquiry was illegal, he raised a dispute before the labour machinery cumulating the reference as stated earlier when an attempt of conciliation failed before the labour machinery.

3. The management of MCL has resisted the statement of claim taking a stand that the disputant workman remained absent from duty from 5.1.2007 onwards without any prior intimation. Hence, a departmental proceeding was initiated against him for his unauthorized absence and he was duly noticed or informed about the initiation of a departmental proceeding. He was communicated about the date of holding of enquiry. The co-worker of the disputant workman participated in the departmental proceeding on his behalf. On completion of the enquiry he was served with a copy of the enquiry report and invited to submit his show cause. He was also invited show cause as to why he shall not be dismissed from service on being convicted for an office of 302/34 IPC. It is the plea of the management that the disputant workman admitted to have remained absent from duty due to his conviction and imprisonment. Hence, he was held guilty of misconduct for his unauthorized absence and imposed punishment of removal from service as per the provision of the Standing Order of the Company. There was no violation of principles of natural justice while holding the departmental enquiry and punishment of removal was imposed after giving the disputant workman all opportunities of being heard. Therefore, no illegality is committed by the management for dismissing the disputant workman from service on account of his misconduct of unauthorized absence as well as on his conviction in a criminal trial for an office of moral turpitude. Therefore, prayer has been made by the first party management for rejection of the statement of claim on the grounds narrated earlier.

4. On the aforesaid pleadings of the parties, the following issues have been settled for proper adjudication of the dispute.

ISSUES

(i) Whether the action of the management of Mahanadi Coalfields Ltd., Sambalpur in removing the services of Sri Jnanendra Prasad Panda is legal and justified ?

(ii) To what relief the workman concerned is entitled to ?

5. It is pertinent to mention here that all the issues including the issue of fairness of departmental enquiry have been taken up simultaneously as the management did not raise in any point of time to hear the issue of fairness of departmental proceeding as a preliminary one. Rather, both the parties seem to have given reply and consent for simultaneous hearing of all the issues and disposal of the reference without hearing of a preliminary issue on the fairness of the departmental enquiry.

6. The second party workman has examined himself as W.W.1 and filed the copies of the notice dated 19.3.2009 of the management, letter dated 18.7.2009 of the management, memorandum dated 18.7.2009 of the management, provisional/preliminary show cause reply dated 4.8.2009 of the workman to the notice of the management dated 18.7.2009, order of removal dated 17.3.2010 issued by the Sub-Area Manager, order dated 29.9.2011, order dated 8.2.2013 and orders of Hon'ble High Court in CLRA No.80/2007 marked as Ext. 1 to Ext. 8 in support of his claim advanced in his statement of claim whereas, the management has examined its Sr. Manager (Personnel) as M.W.1 to refute the claim of the workman.

FINDINGS

7. All the issues are taken into consideration at a time for the sake of convenience.

8. Coming to the contention raised by the disputant workman on the point of fairness of departmental enquiry, it is his plea and evidence that he was not served with any charge sheet for his unauthorized absence as alleged by the management as well as he was not served with any notice on holding of the enquiry. It is also the claim of disputant workman that he was not given any opportunity of being heard in the departmental action and he was not served with copy of the enquiry report of the departmental proceeding and he was not invited show cause on the finding of the Enquiry Officer before his dismissal. Argument has been advanced on behalf of the disputant workman that except oral evidence of M.W.1 not a single scrap of paper or departmental proceeding file is filed to establish that charge sheet in the departmental proceeding was duly served on him and he was given opportunity of being heard in the said departmental proceeding. On the other hand, submission has been advanced by the management that keeping in view the documents relied upon by the disputant, there is no necessity or requirement to prove that the departmental proceeding was initiated and heard with all opportunities to the disputant workman. On a close reading of the oral evidence of the disputant workman along with the documents exhibited by him it is found that on 19.3.2009 he was served with a notice Ext.1 whereby he was informed about holding of the departmental enquiry on 24.3.2009 at 10 AM in the office of the Enquiry Officer. The disputant workman is found to have acknowledged the receipt of the notice on the body of the same. In his cross examination he has admitted that he took assistance of co-worker in the departmental proceeding. It is in his pleading as well as in the evidence that he was released on bail on February, 2009. The departmental enquiry having been fixed on 24.3.2009, it cannot be said or hold that he did not aware of the enquiry due to his remand in jail custody. Further, he admits the participation of the co-worker in the departmental enquiry. When he was noticed on 19.3.2009, he could have raised objection, if any, for non-receipt of his charge-sheet in the departmental proceeding. Rather, he has admitted in his cross-examination that he remained absent from duty from 5.1.2007 to 5.3 2009 and he did not inform his authority about his custody in jail after being convicted and sentenced to undergo life imprisonment in the Sessions Case No. 343/1999. Ext.2 reveals that he was issued with a copy of enquiry report and invited to submit his explanation on the finding of the Enquiry Officer within 15 days of the receipt of the letter.The letter was issued on 17.7.2009. He has admitted in his affidavit evidence that he submitted a representation on receipt of the enquiry report and the letter dated 17/18.7.2009. Hence, his stand and assertion that he was not issued with any charge-sheet, he was not given an opportunity of being heard and he was not invited second show cause on the enquiry report before the punishment is not believable or acceptable. When the evidence of the workman itself suggests that he was informed about the date, time and place of departmental enquiry; he engaged a co-worker as his defence assistant; he was invited to file his show cause on finding of the Enquiry Officer and he did not raise a contention in his show cause to the enquiry report that he was not served with a charge-sheet or documents on the basis of which his mis-conduct is going to be established, non filing/production of departmental proceeding file before the Tribunal by the management has no consequence and it cannot be inferred from the same that the departmental enquiry was conducted without following the principles of natural justice

9. The disputant workman has admitted to have submitted his representation on the alleged charges. He has admitted before his authority that he could not attend the duty on account of being imprisoned for life in the criminal case. It is also admitted by him that he did not inform his authority while he was in judicial custody. Therefore, his absence from duty from 5.1.2007 onwards cannot be stated legal and justified in any stretch of imagination. Be that as it may, finding of the Enquiry Officer as well as holding the disputant workman guilty for unauthorized absence cannot be said or held perverse. Law is well settled that the Tribunal/Court cannot act as a Court of appeal in the finding of a departmental enquiry. It is apparent that the enquiry was conducted following the principles of natural justice and the finding is not perverse keeping in view the evidence/materials led in the proceeding and rather, a reasonable person can arrive at the conclusion as drawn by the Enquiry

Officer on the basis of materials led before him. When the disputant workman himself admits to have remained absent from duty from 5.1.2007 onwards without duly informing his authority and he has admitted that his co-worker defended him in the departmental enquiry and he was informed about the date, time and place of enquiry vide Ext.1 and he was issued with enquiry report and invited show cause vide Ext.2, it is hard to believe or accept that the disputant workman was imposed with the punishment of removal without being given a chance of hearing i.e. in violation of principles of natural justice. It is not seriously disputed that as per Clause 28.10 major punishment like dismissal/removal can be imposed for a long unauthorized absence. In the case at hand, the punishment of removal does not seem to be dis-proportionate or harassed considering to the gravity of mis-conduct i.e. long unauthorized absence.

10. That apart, it cannot be over-looked that the disputant workman has been convicted and sentenced with life imprisonment under Section 302/34 IPC. There is no pleading or evidence to suggest that his appeal against such conviction is allowed and he is acquitted by the appellate Court. On being convicted for a crime of a serious nature like murder, he can be removed/dismissed from service as per the Standing Order of the management and such order of dismissal/removal can be issued without initiation of a departmental proceeding in the event of conviction of an employee/workman. It is seen from the evidence and pleading of the disputant workman that he was issued with a notice to file his show cause for his removal on the ground of his conviction. Though, no separate order is passed on the aforesaid ground, the standing order has empowered the management to remove or to dismiss the disputant workman from service with effect from the date of conviction since admission of appeal and granting of bail do not stay the finding and conviction of the accused. Such stay in a criminal appeal is always against the sentence passed by the trial Court.

11. Coming to the relief to which the disputant is entitled, it is in the evidence and not disputed that the workman served for more than 27 years under the first party management. No pleading or evidence is advanced by the management to hold that the disputant had any adverse remark during his service tenure. Hence. The pleading and evidence of the disputant that he completed unblemished service for more than 27 years under the management cannot be lightly brushed aside. The dismissal of the workman was due to long unauthorized absence from duty and on account of being held guilty of misconduct for such unauthorized absence. He was not held guilty of misconduct for habitual absenteeism or irregular attendance. There is no material to suggest that any other departmental action was ever contemplated against him except the charge of long unauthorized absence. It is also well recognized principle as laid down by the Hon'ble Apex Court in various cases that, if the punishment imposed by the disciplinary authority is totally disproportionate to the guilt of charge of employee and such disproportionate punishment is shocking to the conscious of the Court, then only the Court can interfere with such punishment. Keeping in view the above settled principle and the fact that the disputant workman worked for more than 27 years with unblemished service record till he was held guilty of misconduct for unauthorized absence, in my considered view, punishment of dismissal without any terminal benefit is apparently harassed and shockingly disproportionate to the gravity of misconduct for which the disputant workman has been held guilty. Hence, the punishment of dismissal in the case is modified to the punishment of discharge from service as a result of which the workman is entitled to the terminal benefits. Accordingly, the management is directed to extend terminal benefits to the disputant workman for the period of his service rendered under the management. The financial benefit towards such terminal benefits shall be paid to the disputant workman within two months from the date of the Notification of the Award failing which, the workman is entitled to interest on Bank rate on the said amount from the date of the Award.

Accordingly the reference is answered and the award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 13 जुलाई, 2020

का.आ. 567.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स फ़ूड कारपोरेशन ऑफ़ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह-श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 47/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-22011/43/2014-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 13th July, 2020

S. O. 567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2014) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the Management of M/s. Food Corporation of India and their workmen, received by the Central Government on 07.07.2020.

[No. L-22011/43/2014-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 47 OF 2014

Dated Bhubaneswar, the 17th March, 2020

Present: Shri B.C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar.

Between:

The Senior Regional Manager,
Food Corporation of India, Khadan Bhawan,
Vani Vihar, Bhubaneswar – 751004.
The District Manager,
Food Corporation of India, Aska Road,
Berhampur – 760001 ...First party managements

AND

Sri Khalia Routa & others,
Representative of Contract Workers,
Narendrapur, Dist. Ganjam (Odisha) – 760007. ...Second partyUnion

Appearance:

NONE : For first party managements

Sri Khalia Routa : For second party Union

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-22011/43/2014 IR(CM-II)) dated 14.08.2014 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the termination of services of Sri Khalia Routa and 85 others (list attached – Annexure 'A') w.e.f. 31.12.1987 without regularizing their service as FCI Employees like 73 workers (list attached – Annexure 'B') who have been taken into services, is legal and justified ? If not, what relief the workmen are entitled to ?"

2. The case of the second party Union as emerging from its statement of claim is that Food Corporation of India constituted/created under Food Corporation Act,1964 is having four zones. Each zone have several regions under it. Thus, the Corporation has a region in the state of Odisha. There are many depots including the depots of Jagannathpur, Narendrapur, Karapalli, Bada Kusthali, Gobindapur, Ganjam Jayashree, Rajapur and palligumuda in the regions of Odisha. The above named depots are situated in the District of Ganjam. The disputant workmen as listed in the schedule of reference numbering 85 were engaged as handling workers in the depots of Ganjam District through one Surendra Nath Jena, President-cum-Labour Sardar-cum-Labour Contract Cooperative Society Ltd., Jagannathpur, Those handling workers were under the direct payment of the first party managements No.1 and 2. Those handling workers were doing the work of loading and unloading of food grains from the year 1971. Initially 63 numbers of handling workers were engaged in the Jagannathpur depot and the number of workers was increased day by day as per the requirement of the first party managements. It is the claim of the second party Union that those handling workers including the disputants named in the schedule of reference were engaged in between 23.8.1971 to 1.12.1983 in different depots of the FCI situated in the

District of Ganjam and they worked continuously and uninterruptedly till 31.12.1987. They were receiving wages directly from the first party managements for their loading and unloading work. They discharged their duties to the best of their ability as well as utmost satisfaction of the first party managements. In the year 1973 the union of handling workers made a demand for abolition of handling contract system in the depots of Jagannathpur and Dhenkanal and departmentalization of workers employed in handling contract system. Basing upon such demand and the strike of the Union a settlement was reached out between the management of FCI and the Union on 16.3.1973 by which the workmen nominated and identified by the authorized representatives of the Union would be entrusted/engaged handling work and they would be under the direct pay roll of the management. When such direct payment system was prevailing and the disputant workmen were continuing in the job of handling workers at Jagannathpur depot and other depots of Ganjam, the first party managements prohibited the entry of the disputants to their depots including the depots of Jagannathpur, Dhenkanal and Jharsuguda. The workers of Dhenkanal and Jharsuguda depots raised industrial disputes for which references were registered vide I.D. Case Nos. 9/77 (C) and 5/78 (C) in the State Industrial Tribunal, Bhubaneswar and the references were disposed of on 29.9.1987 with award in favour of the prohibited workmen of those depots. The management of FCI preferred writ challenging such Award. But, the writ was dismissed and the Hon'ble High Court confirmed the Award of the State Industrial Tribunal with certain modification. It is further claim of the second party that SLP preferred by the management against the order of the Hon'ble High Court was not admitted in the Hon'ble Supreme Court. Keeping in view the Award the first party managements allowed 144 workers to work in the depots of Jagannathpur and Narendrapur of Ganjam District treating them as departmentalized employees. But, some of those workers were never engaged or worked earlier as handling workers before the prohibition, but could able to enlisted in the departmentalization taking advantage of non-identification of such genuine handling workers engaged earlier. When it came to the knowledge of Labour Sardar Sri Surendra Nath Jena that those workers were outsiders and genuine handling workers were ignored, he raised a grievance before the managements claiming departmentalization of the disputants ad others in the direct payment system since they were wrongly refused engagement of handling workers. When their grievance for reinstatement and regularization was not taken into consideration by the managements after passing of the Award by the State Industrial Tribunal, the disputants workmen raised a dispute before the labour machinery for their illegal termination with effect from 31.12.1987. As the conciliation failed the reference as stated earlier is made to this Tribunal for adjudication of such dispute. In the statement of claim prayer has been made that the disputants may be reinstated and departmentalized (regularized) with effect from 31.12.1987 with full back wages and all consequential service benefits. As most of the disputants have attained the age of superannuation they shall be given all financial benefits being deemed to be in continuous service as handling workers.

3. Since the managements did not appear and contest the claim inspite of being noticed, they have been set ex-parte.

4. The second party Union has examined one of the disputants namely Sri Khalia Routa as W.W.1 and filed copies of the provident fund payment sheets issued by the Regional Provident Fund Commissioner, Bhubaneswar in favour of the disputants and the copy of the order dated 07.03.2002 passed by Assistant Provident Fund Commissioner, Berhampur marked as Exts. 1 and 2 in order to establish its claim.

5. Taking into consideration the pleading and prayer made by the second party Union in its statement of claim, it is to be seen whether the disputants were the employees/workmen of the management when they were prohibited to work as handling workers from 31.12.1987 and of they were refused employment/engagement as well as departmentalization (regularization) in service under the scheme of 'direct payment system' introduced by the first party management and if so, to what relief they are entitled.

6. Coming to the pleading advanced by the Union in its statement of claim and the evidence adduced by W.W.1, it seems that the dispute has been referred to this Tribunal to find out and decide whether termination of services of W.W.1 and 85 others named in the list attached to the reference with effect from 31.12.1987 without regularizing/departmentalizing their services by the management of FCI is legal and justified and if not, to what relief the disputants are entitled. As per the pleading advanced in the statement of claim and oral evidence of W.W.1, claim has been made that the disputants were in the services of the managements from their respective date of engagement in between in the year 1971 to 1983 and they were in continuous and uninterrupted service from their respective engagement till they were prohibited from doing/discharging the handling work with effect from 31.12.1987. According to the disputants they were under the direct payment scheme of the management. Refusal of employment to them and allowing outsiders to carryout the handling work under the direct payment scheme is a clear-cut violation of the provision of Section 25-F and 25-G of the Act as no notice pay and retrenchment compensation was paid to them before disallowing them to work under the direct payment scheme. As per the settled principle of the Hon'ble Apex Court in a catena of decisions including in the case between Municipal Corporation, Faridabad and Siri Niwas reported in SC(2004) Vol. III LLJ 760 and the case between M.P. Electricity Board and Hari Ram reported in SC(2004) Vol. III LLJ1144 that the burden was on the

workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment/refusal of employment. Similarly burden lies on the workman to establish the relationship of employer and employee in order to raise and industrial dispute against the management. If the initial burden in the above aspect is discharged by the workman, the onus shift to the industry/management to refute the claim of the workman. Be that as it may, it is seen on the examination of the exparte evidence advanced by the workmen that except oral assertion of W.W.1 in regard to his and others engagement as handling workers under the direct payment scheme of the management, there is no other credible or documentary evidence to establish that the disputants were engaged to handle the work of loading and unloading in the depots prior to 31.12.1987. The document Ext. 1 series and Ext. 2 do not reveal in any manner to show or suggest that the disputants named in the schedule of reference were extended EPF benefits on account of they being engaged or employed by the managements as handling workers. Similarly, the order of the Assistant Provident Fund Commissioner, Berhampur does not reveal that the management of FCI was directed to deposit the EPF contribution towards engagement of the disputants as handling workers. It is an order without identification of the workmen/employees likely to be benefitted by the deposits. Therefore, there is no credible evidence or material except oral assertion of W.W.1 that the disputants were engaged as handling workers in the depots of FCI at Jagannathpur and Narendrapur prior to 31.12.1987.

7. Further, on a close examination of the pleading and oral testimony of W.W.1 along with the order of the Assistant Provident Fund Commissioner, Berhampur under Ext. 2, it is emerging that the handling workers were engaged for loading and unloading of food grains in the depots through Labour Contractor-cum-Sardar Sri Surendra Nath Jena. Sri Jena was paying wages to the labourers engaged for handling work. In that circumstances evidence is also wanting to establish the relationship of employer and employee between the managements and the disputants. The disputants are allegedly prohibited to enter into the depots to work of loading and unloading.

8 It cannot also be over-sighted that the disputants are alleged to have been denied engagement with effect from 31.12.1987 whereas, the dispute seems to have been raised in the year 2014 more than 25 years after the alleged refusal of employment/engagement. Undisputedly no limitation period is prescribed for raising such an industrial dispute in the Act. But, raising of such dispute in a much belated stage cannot be ignored while considering the merit of a claim advanced by the disputants. No explanation is also coming forth from the pleading and evidence of the second party as to why they took more than 25 years to advance their claim that they were unjustifiably refused engagement whereas outsiders were allowed to be regularized/departmentalized by the management employer. In absence of any credible evidence as to the engagement of the disputants as handling workers much belated approach to the labour machinery raises a serious doubt on the claim of the disputants.

9. Hence for the reasons mentioned above the statement of claim preferred by the second party Union has no merit for consideration and accordingly the same stands rejected.

Accordingly reference is answered and Award is passed.

Dictated and corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 13 जुलाई, 2020

का.आ. 568.—औद्योगिक विवाद अधिनियम, 1947 (14 का 1947) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एन.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह- श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 106/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुआ था।

[सं. एल-22012/32/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, डेस्क अधिकारी/अनुभाग अधिकारी

New Delhi, the 13th July, 2020

S. O. 568 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/2015) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the Management of M/s. N.C.L and their workmen, received by the Central Government on 07.07.2020.

[No. L-22012/32/2015-IR (CM-II)]

RAJENDER SINGH, Desk Officer/Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Present : DIPTI MOHAPATRA, LL.M., PRESIDING OFFICER

I.D. No. 106/2015
Dtd: 30.04.2020

Sri R. Balamurugan & Others
No. 301, Ashok Nagar-II
Vadakuthu Post
Neyveli-607801
Cuddalore District : 1st Party/Petitioner

AND

1. The Chief General Manager
Mechanical Services & Transport
Central Technical Office Building
NLC Ltd.
Neyveli-607803 : 2nd Party/1st Management

2. The General Manager
M/s. Man Tech Co.
F-12, Post Office Road, Block-16
Cuddalore District : 2nd Party/2nd Management

3. The General Manager
M/s. SBM Agency Pvt. Ltd.
F-12, Post Office Road, Block-16
Cuddalore District : 2nd Party/3rd Management

Appearance:

For the 1st Party/Petitioner : Advocate, M/s. K.M. Ramesh

For the 2nd Party/1st Management : Advocate, M/s. T.S. Gopalan & Co.

For the 2nd Party/2nd & 3rd Management : Advocate M/s. A.V. Arun

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-22012/32/2015-IR(CM.II) dtd. 01.07.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"*Whether the demand of the Contract Workmen engaged by M/s SBM Agency Pvt. Ltd. And M/s Man Tech & Co. demanding wages as per with the wages payable to other contract workmen engaged in NLC Limited, Neyveli as per Memorandum of Settlement? If so, to what relief the concerned workmen are entitled?*"

2. On receipt of the above reference from the appropriate Government, the dispute on reference is registered in ID No. 106/2015 and notices were issued to both the parties for their appearance. Both parties accordingly entered appearance. The Claim Statement while is filed by the Petitioner, all the Respondents 1, 2 and 3 filed their respective Counter Statements. The case was listed for enquiry and parties accordingly were informed.

3. The case even though was listed to several dates, the enquiry could not be held, as the Counsel for the Petitioner sought for adjournment on the ground that the Petitioner is not willing to proceed with the case and wants to file memo to the effect. Accordingly, the case was adjourned for the purpose. The Petitioner failed to file any memo to the effect but sought for further adjournments through its Counsel. After several adjournments, the case was however posted for enquiry on 02.03.2020 and the parties were directed to appear. On 02.03.2020 the Petitioner, R. Balamurugan alongwith his Counsel appeared before this Court. The Applicant-Petitioner files Affidavit-Evidence and was examined as WW1. He adduced evidence that he had approached the Labour Machinery (ALC (C), Chennai) raising his grievances against the Respondents regarding

his wages. Since the dispute could not be resolved before the Labour Machinery the Failure Report was sent to appropriate government which referred the dispute to this Tribunal for adjudication vide reference dtd. 01.07.2015. The registration of instant ID case i.e. ID 106/2015 is accordingly admitted by the Petitioner. It is further submitted by the Petitioner that he is presently working under the Contractor other than the Respondents. He expresses his unwillingness to proceed with the case against all the Respondents. He assigned, that even though he has raised the dispute demanding enhanced wages against the Respondents, he has no more grievance against them as his present employer has already enhanced his wages. He further states that his present employer has been paying the increased wages. The Petitioner accordingly submits before the Tribunal to pass an appropriate order in this regard on the specific ground that he is not willing to proceed with the case against all the R1, R2 and R3.

4. The Learned Counsel, M/s T.S. Gopalan on behalf of the First Respondent, M/s. NLC Limited cross-examined the Witness, Petitioner. The Petitioner categorically repeated the same that he has no grievance against the First Respondent. The other Respondents did not prefer to cross-examine the Witness.

5. In view of the discussion held in preceding paragraphs and the material borne out from the evidence of the Petitioner it is held that the Petitioner since gainfully employed and fully satisfied with his present job profile and salary, raises no grievance against the Respondents with regard to the dispute raised by him earlier. In the circumstance his submission not to proceed with the case has got sufficient force for consideration.

In the result there exists no dispute for adjudication as per the reference.

The reference is answered accordingly.

(Dictated and transcribed by PA and corrected and pronounced in the open court on this day the 30th April, 2020)

DIPTI MOHAPATRA, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : Sri R. Balamurugan

For the 1st, 2nd & 3rd Respondents : None

Documents Marked :

On the petitioner's side

Ex. No.	Date	Description
	Nil	

On the Management's side

Ext.No.	Date	Description
	Nil	

नई दिल्ली, 14 जुलाई, 2020

का.आ. 569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. एस.एस. मिनिरलस अन्तर्गत मै. बी.सी. मोहन्ती एण्ड सन्स प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 49/2011 एंव 25/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-29012/35/2010-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2011 & 25/2012) of the *Cent.Govt.Indus.Tribunal-cum-Labour Court, Bhubaneshwar* as shown in the Annexure, in the industrial dispute between the management of M/s. S.S. Minerals under M/s. B.C. Mohanty & sons private Limited and their workmen, received by the Central Government on 14.07.2020.

[No. L-29012/35/2010-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NOS. 49/2011 & 25/2012

Dated Bhubaneswar, the 21st April, 2020

Present: Shri B.C. Rath, Presiding Officer,
CGIT-cumLabour Court, Bhubaneswar

Between:

1. M/s. B.C. Mohanty & sons (P) Ltd.,
Mine Owners & Exporters, Raja Bagicha, Cuttack.

2. M/s. S.S.Minerals,
Contractor, At/PO. Sukinda,
Dist. Jajpur – 755018. ...First party Managements

AND

Smt. Pramila Mohanta
W/o. Ramesh Mohanta, At. Ostgpal, PO. Kansa,
PS. Kaliapani, Dist. Jajpur. ...Second party Workman

Appearances:

Sri B. Swarnakak,Advocate : For first party Management No.1

Sri R.P. Pattanaik,Advocate : For first party Management No.2

Sri B.P. Tripathy, Advocate : For second party Workman

AWARD

By this common Order/Award both the above noted cases are disposed of since the cause of action, the dispute and the parties are identical in both the cases. It is pertinent to mention here that I.D. Case No.49/2011 was registered on receipt of an application/statement of claim directly from the second party workman under the provision of sub-sections (2) and (3) of Section 2-A of the Industrial Disputes Act, 1947 (here-in-after referred to as 'the Act') whereas, I.D. Case No. 25/2012 was registered on receipt of the reference made by the Government of India, Ministry of Labour & Employment for adjudication of the dispute vide its Order No. L-29012/35/2010 (IR(M)) dated 16.1.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act and the terms of reference reads as follows:

> "Whether the action of the management of contractor M/s. S. S. Minerals working under M/s. B. C. Mohanty & Sons (P) Ltd. in terminating the services of Smt. Pramila Mohanta, Creche Ayah w.e.f. 6.11.2009 without paying terminal benefits as per Section 25 (F) of the ID Act, 1947 and not re-engaging her in service is legal and justified ? What relief the workman is entitled to ?"

2. The case of the second party workman is that she joined in the establishment of the first party management No.2 M/s. S. S. Minerals, which is under the control of the management No.1 M/s. B. C. Mohanty & Sons (P) Ltd. on 14.2005 as Crech Aya and continued in the job till she was retrenched on 5.11.2009. She was paid Rs.4,500/- towards her monthly wages after deduction of Provident Fund contribution when she was terminated from service. It is her claim that after her joining, she insisted her employer to enter her name in the 'B registered' and asked for minimum wages as fixed by the Central Government from time to time. According to her, when she raised her grievance in this regard before her employer, her service was terminated vindictively on 5.11.2009 without complying of the provision of Section 25-F of the Act even though she worked continuously and uninterruptedly for more than 240 days in each calendar year from the date of her appointment.

3. Both the managements have contested the claim taking a stand that the allegations raised by the disputant workman is baseless and frivolous. She was never got appointment by them and she did not work continuously for 240 days in a year. Thus, both the managements have refuted all the allegations raised by the disputant workman.

4. On the aforesaid pleadings of the parties, the following issues were settled for just adjudication of the dispute.

ISSUES

(i) Whether the reference is maintainable under the Industrial Disputes Act ?

(ii) Whether the action of the management of Contractor M/s. S. S. Minerals working under M/s. B. C. Mohanty & Sons (P) Ltd., in terminating the services of Smt. Pramila Mohanta, Creche Ayas w.e.f. 6.11.2009 without paying terminal benefits as per Section 25(F) of the ID Act, 1947 and for not re-engaging her in service is legal and justified ?

(iii) If not, what relief the workman is entitled to ?

5. The disputant workman has examined herself as W.W. and filed the copy of attendance register marked as Ext.1 in support of her claim. When the adjudication proceeding was fixed for evidence of the managements, a petition along with memorandum of settlement is filed wherein and whereby the disputant workman agreed to receive an amount of Rs.2,50.000/- as a compensation towards full and final sentiment of her dispute with the managements. On being asked and read-over and explained the settlement, she admitted to have entered into a settlement on her own volition without being influenced in any forum by the management. She has also stated that she has already received Rs.2,50.000/- as per the memorandum of settlement vide Demand Draft No.679954 dated 9.12.2009 amounting to Rs.2,00,000/- and a cash of Rs.50,000/-. She has further submitted that she is not interested to pursue the dispute.

6. Having regard to the settlement between the parties out of the Court and the joint petition moved by them in this regard. I do not feel it necessary to give any finding on the dispute as stated earlier and the reference is deemed to be disposed of in favour of the second party workman as per the terms and conditions of the settlement.

Accordingly the reference is answered and the Award is passed.

The Memorandum of settlement be treated as part of the Award.

Dictated and corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीमेन्ट कोरपोरेशन आफ इंडिया लिमिटेड, राजबन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ के पंचाट (संदर्भ सं. 46/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-29012/19/2015-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 46/2015) of the *Cent.Govt.Indus.Tribunal-cum-Labour* Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Cement Corporation of India Limited, Rajban and their workmen, received by the Central Government on 14.07.2020.

[No. L-29012/19/2015-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 46/2015

Registered on:-16.10.2015

Ronki Ram S/o Bhlaku Ram, R/o Vill. Kando-Nadi, P.O. Sera-Sujeti,
Teh. Paonta Sahib, Distt. Sirmaur (HP), through J.C. Bhardwaj,
President HP-AITUC, H.Q. Saproon, Solan (HP). ...Workman

Versus

Cement Corporation of India, (CCI) Rajban Cement Factory, Paonta Sahib, Distt. Sirmour (HP), through its General Manager. ...Management

AWARD

Passed on:-04.05.2020

Central Government vide Notification No. L-29012/19/2015-IR(M) Dated 23.09.2015, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

"Whether action of termination of service of Sh. Ronki Ram w.e.f. 18.11.2015 by the management of Cement Corporation of India Ltd., Rajban is legal, just and valid? If not, to what relief the workman is entitled to and from which date?"

1. Both the parties were put to notice and workman filed its statement of claim, alleging therein that he was engaged/employed as Driller during the month of May 1982 by the Cement Corporation of India directly to operate drilling machine under the supervision of Rajinder Prasad, Foreman and the attendance of the workman was marked by the Foreman Rajinder Prasad. The wage bill was also prepared by Rajinder Prasad after his verification, the payment of wages were paid by the CCI till his illegal termination/retrenchment on 18.11.2005. The workman was implicated in the false criminal case under Section 379, 405, 411/34 of the IPC and F.I.R. got registered by the Police in connivance with the officials of the corporation. The workman was granted bail by the Competent Court of law and when he reported back on his duty, corporation did not allow him to resume his duties where he was working as Compressor Operator at the time of his oral termination. He was told by the management that his reinstatement in service shall depend only on the final decision of the Criminal Court. The workman was acquitted vide order dated 28.12.2013 by the Judicial Magistrate 1st Class, Paonta Sahib and received the copy of the judgment on 10.02.2014. He applied to the management on 06.03.2014 to allow him to resume his duties but of no avail. He again submitted application through the Chief Parliamentary Secretary (Government of Himachal Pradesh) on 20.03.2014 but management remained silent and did not allow the workman to resume his duties. The termination of the services of the workman was executed against the provision of the Industrial Disputes Act, 1947 and his case is fully covered under Section 25-F, and 25-N of the Act as neither notice was served upon him nor retrenchment compensation was given to him at the time of retrenchment. The workman has rendered more than 22 years of service and his gratuity was not paid by the management. The management did not conduct any domestic enquiry and terminated his services against the provision of Article 21 and 41 of the Constitution of India. Hence, the termination dated 18.11.2015 may be treated as non-est in the eye of law and he be reinstated in service with full back wages and other consequential benefits with costs.

2. The management of Cement Corporation of India has submitted its written statement, denying the facts alleged in the claim statement. It is alleged that workman was neither appointed by the management through any appointment letter nor terminated as there was no privity of contract in regard to any matter whatsoever between the management and workman. There was no administrative or disciplinary control over the workman as he was an employee of the contractor Albel Singh, one of the labour contractors. The entire payment in respect of wage bills for supply of manpower was made to the contractor and the contractor further paid the same to his employees as per the terms and conditions of work order which is attached as Annexure R-1 with the written statement. The present reference deserves to be dismissed on the ground of res-judicate as the workman has filed Civil Suit before the Hon'ble Court of Judicial Magistrate 1st Class, Paonta Sahib, District Sirmur, Himachal Pradesh. The legal notice served upon the management was duly replied by the management being the employee of the contractor. Workman was nowhere in the employment of the respondent-management as such, question of payment of retrenchment compensation is beyond question. The claim statement is misconceived, misstated and wrong and the workman is not entitled for any relief whatsoever through this reference.

3. Workman has filed its replication, alleging therein that the log book of the workman is executed by the workman and was maintained by the management while working as Compressor Operator and it is in possession of the management itself. There was direct relationship of employer and employee between the workman and respondent-management and it is a matter of mockery that Annexure R-1 is an unfilled performa presented in the name of work order. It is also stated that the workman was never aware about the so called contractor and only worked with the management. The principle of res-judicate is not applicable as Civil Court has no jurisdiction to adjudicate the Industrial Dispute. The remaining facts alleged in the replication are the same as is alleged in the claim statement as such, it does not required to be repeated again.

4. Workman Ronki Ram has filed his affidavit in evidence Ex.WW1 along with documents Ex.W-1 to W-6. During the course of cross-examination, workman has stated that there was neither advertisement in newspaper regarding the vacancy of the management nor appointment letter was issued by the management for his posting and he was falsely implicated by the management of CCI and he was paid salary by Cement Corporation of India but has no proof with respect to the payment of salary by the Cement Corporation of India.

5. Management has examined Surendra Kumar, HOD(P&A), who filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1/1 to Ex.MW1/3 and has been cross-examined by the AR of workman. This witness has stated that workman was in the employment since 1982 as Buldoger Operator. He has stated that he is not aware whether Rajinder was Forman of the management who used to make attendance of the workman from the year 1982 to 2004. This witness has further denied knowledge that the agreement was executed between the management and the 3rd party contractor. Surendra Kumar has further stated that he does not know whether the management has got registered with the Contract Labour Authority for taking outsourcing staff through contractor. This witness has further stated that he does not know about any request letter which was given by the workman to the management of CCI. Thus, the evidence tendered by the management witness Surendra Kumar is ample proof that workman has rendered his services from the year 1982 to 2004 with the management as Driller and Buldoger Operator.

6. I have heard the argument of learned AR of the workman Sh. J.C. Bhardwaj and learned counsel for the management Sh. D.R. Sharma and perused the file as well as written arguments filed by the workman and documents on record.

7. Learned AR of the workman argued that the workman had joined the respondent-management in the month of 1982 directly and served in the capacity as Driller till his termination on 18.11.2005. It is also contended that the workman was performing his duty directly under the management and there was no contractor at all under whom he served. Learned counsel of the workman argued that services of the workman is terminated in utter violation of Contract Labour Act without issuing any notice under Section 25-F of the ID Act or one month salary in lieu of notice. Learned counsel further argued that in spite of the assurance by the management that after the acquittal of the workman, he will be reinstated but management did not honour his words and refuse to re-engage him even after the acquittal by the Court. Learned counsel further argued that due to assurance and pendency of the Criminal Court, workman could not raise the industrial dispute under the assurance given by the management for his reinstatement. Learned counsel further argued that there was direct relationship of employer and employee between the management and workman as such, he is entitled for all the claims made in the claim statement. Learned counsel has placed reliance in the case of ***Dharangadhara Chemicals Works Ltd. Vs. State of Saurashtra, AIR 1957, Supreme Court page 264, Ram Singh and others Vs. Union Territory Chandigarh and Oths., Civil Appeal No.3166/2002, decided on 07.11.2003*** and in ***Steel Authority of India Ltd. Vs. Union of India and Oths.(2007) 1, Supreme Court cases, page 630,*** which deals with the relationship between employer and employee/master and servant and forum for deciding nature of employment of workmen with establishment and contractors.

8. Per contra, learned counsel of management vehemently argued that reference is not maintainable as it is referred after a long gap of more than 10 years as it has become stale. Learned counsel further argued that there was no relationship of employer and employee/master and servant between the workman and management as such, respondent-management has no liability towards the workman. Learned counsel further argued that being the employee of the contractor Albel Singh if any liability occurs, it is between the workman/claimant and contractor under whom he served under the employment period. Learned counsel further argued that being the employee of the contractor Albel Singh if any liability occurs, it is between workman/claimant and contractor under whom he served under the employment period. Learned counsel of the management has also submitted that workman has utterly failed to submit documents in order to prove the relationship with management as such, petition is liable to be dismissed. Learned counsel has relied in the case of ***Secretary State of Karnataka Vs. Uma Devi(supra) and subsequent judgment of State of Karnataka Vs. M.K. Kesari & Oths (2010) 9 SCC 247.***

9. There is no dispute about preposition of law that onus to prove that workman/claimant was in the employment of management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the management. Such evidence may be in the form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.*** There is hardly any dispute with the preposition of law as propounded in the aforesaid case. The Hon'ble Supreme Court after analysing the catena of cases has laid down in ***Balwant Raj Saluja Vs. Air India Limited in Civil Appeal No.10266 dated***

25.08.2014, two well recognised tests to find out whether the labours are the contract employees of the principal employer are:-

1) Whether the principal employer pays the salary instead of contractor and

2) Whether the principal employer controls and supervise the work of the employees?

The facts regarding the payment of salary by the management is orally stated in the claim petition as well as affidavit of the workman Ronki Ram. It is specifically stated that workman rendered his services under the direct control and supervision by the Foreman of the Corporation Rajinder Prasad, who prepared his wage bill and after his verification, the payments of earned wages of the workman was paid by the C.C.I. In fact there is no documentary evidence with respect to the payment of wages/salary by the management to the workman. But the affidavit filed by the workman Ronki Ram clearly states that it was the management who paid his salary during his services even during the course of cross-examination, workman has stated that it was Cement Corporation of India who paid his salary. Contrary to this, learned counsel of management argued that it was the contractor who paid his salary. Learned counsel of the workman argued that the best evidence with respect to the engagement of contractor and payment was available with the management but in spite of the several opportunities, management knowingly did not produce any documents with respect to the wages of the workman as well as payments etc. Witness examined by the management Surendra Kumar, HOD(P&A), has admitted in his cross-examination that fund of the workman was deducted by the contractor and deposited in the contributory fund maintained by the C.C.I. This witness has further stated that workman was rendering his services from the year 1982 as Buldoger Operator but he did not know Rajinder Prasad, Foreman, who used to mark the attendance of the workman from the year 1982 to 2004. This witness has further admitted that he did not know any agreement executed between the management and 3rd party contractor. Thus, by the statement of this witness, the existence of the contractor Albel Singh losses his importance as he himself is not aware of the Albel Singh being the contractor of the management. It is not only unfortunate but joke as management has submitted copy of so called tender or agreement as Annexure R-1 with the written statement in which nothing is mentioned with respect to the name of contractor Albel Singh. Thus, there is great apathy on the part of the learned counsel of management and management itself in conducting the proceeding before Tribunal by filing blank tender/agreement to deny the justice to poor workman. Thus, it is clear that management has not submitted any reliable document with respect to the contractor Albel Singh and payment by the contractor to workman as well as deduction of the EPF by the contractor, which is deposited with the C.C.I. as per statement of the witness Surendra Kumar, HOD(P&A). Hence, this Tribunal is forced to draw adverse inference against the management in the light of the judgment of the Hon'ble Supreme Court in case of ***Food Corporation of India Vs. General Secretary, FCI India Employees Union & Ors., Civil Appeal No.10499 of 2011, decided on 20.08.2018.*** In my opinion, the very fact that the respondent-management failed to adduce any evidence against it. Indeed nothing prevented to prove the real state of affairs prevailing in the set up relating to the workman. It was not done by the respondent-management for the reason best known to it. The reference may be made to the judgment of ***M/s Bharat Heavy Electrical Ltd. Vs. State of UP and Oths., Civil Appeal No.s2459-2461 of 1999, decided on 21.07.2003,*** where similar observation is made by the Hon'ble Court.

10. Secondly, so far as the control and supervision is concerned, a specific case of the workman that he had worked under the supervision and control of Rajinder Prasad, who was also immediate Supervisor of the workman. It is a specific case of the workman that attendance is marked by the Foreman of the Corporation Rajinder Prasad. There is neither specific denial nor the Foreman Rajinder Prasad was examined by the management. The witness examined by the management Surendra Kumar HOD(P&A) has stated that he does not know about the Rajinder Prasad. Contrary to this, learned counsel of the workman has vehemently contended that the tender/contract with Albel Singh is shame and camouflage just to avoid the liability of the management arising under the Industrial Disputes Act, 1947. In this connection, learned counsel of workmen has placed reliance in the case of ***Steel Authority of India Ltd. Vs. National Union Water Front,*** relating to ***Appeal(Civil) 6009-6010 of 2010, decided on 30.08.2001,*** and contended that in the light of the observation of the Hon'ble Supreme Court, workmen should be treated as employee of the respondent-management. The Hon'ble Court has held in the case of ***Steel Authority of India Ltd. and Oths. Vs. National Union Waterfront Workers and Oths, 2001(4) SCT 1 (SC): 2001(7) SCC 1,*** that where the contract is found to be a sham and nominal rather a camouflage in which case the contract workers working in the establishment of the principal-employer were held the employees of the principal-employer himself. Indeed such cases do not relate to abolition of contract labour but present instances where the Court declared the correct position as a fact at the stage after employment of contract labour stood provided. So far as the present case is concerned, in fact there is not an iota of evidence with respect to the lawful agreement entered into between the workmen and management. The Hon'ble Supreme Court has held in case of ***Steel Authority of India Ltd. Vs. National Union Water Front(supra)*** in Para 107 that:-

"where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited....."

So far as the tender of contract is concerned, that too is not proved by any cogent evidence, even the name of the contractor is not mentioned in the tender or alleged agreement which is on record.

11. Thus, it is clear from the above discussion as well as by virtue of the statement of the witness Surendra Kumar that workman has rendered his services from the year 1982 till his termination by the management as Driller or Buldoger Operator. Hence, the question which arises for consideration is whether workman is entitled for any relief in respect of the reference? It is relevant to mention that the Industrial Disputes Act and other similar relative instruments are social welfare legislation and the same are required to be interpreted keeping in view the goal set out in the frame of the Constitution. The liability on the subject is biased by the Supreme Court in favour of the workman placed in the circumstances such as in several binding precedents. The evidence which is on record is ample proof that workman has rendered so many years with the respondent-management and his work was of perennial nature, having completed more than 240 days in preceding year as required under Section 25 of the Industrial Disputes, 1947 which stipulates one month notice or compensation in lieu of notice.

12. Admittedly, neither notice was issued nor compensation was given to the workman before his alleged termination by the respondent-management on the pretext that he was the employee of the contractor. The Hon'ble Supreme Court in the case of ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya" reported as (2013) 10 SCC 324*** has held that if the order of termination is void ab initio for non-compliance of Section 25-F(Clause A and Clause B) or Section 25-G and 25-H of the Act, the workman is entitled to full back wages. The relevant para of the judgment is as under:

"The propositions which can be culled out from the aforementioned judgments are:

("i) In case of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the workman wads gainfully employed and was getting wages equal to the wages he wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

13. Learned counsel of the workman while placing reliance in the cases of ***Divisional Manager, New India Assurance Company Ltd. Vs. A. Sankaralingam, 2008 LLR 1214, Civil Appeal No.4445 of 2006, decided on 03.10.2008*** and ***Collector Singh Vs. LML Ltd., 2015, LLR page 1,*** argued that Honb'ble Supreme Court while securing the right of the workman has observed that even a part time workman cannot be fired at the will of the employer since he has equally entitled for the job protection carrying in the Industrial Disputes Act. In the case of ***Collector Singh(supra),*** the Hon'ble Supreme Court has held that in given circumstances, lumpsum compensation may be appropriate relief as there was a long duration of 20 years between the date of termination and date of final decision. The Hon'ble Supreme Court while making presumption that workman must have been gainfully employed elsewhere and he is near superannuation, granted compensation of Rs.5,00,000/- as appropriate relief. The fact of the present case is also similar to the case of ***Collector Singh(supra).*** The workman has rendered his services almost 17 years with the management and as per his own statement, he was 58 years old on 03.07.2019 when he has been cross-examined by the management. Thus, it is clear that he is also on the verge of superannuation as such, question of reinstatement with the management appears to be beyond consideration. This Tribunal is also of the opinion that in the absence of specific evidence presumption may be raised that he must have been gainfully employed somewhere as such, compensation will be effective relief in the given case. In the light of the observation of the Hon'ble Supreme Court in ***Collector Singh Vs. LML Ltd.(supra),*** a lumpsum compensation of Rs.5,00,000/- payable by management is appropriate relief instead of reinstatement as workman is near superannuation after a long litigation. Hence, management is

directed to comply the award within 3 months from the notification of award and in case, this amount is not paid within one month from the date of publication of the award, the workman shall be entitled to the said amount with 6% interest from the date of notification till realisation. The reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैं. इंडियन आयल कोरपोरेशन लिमिटेड, मै. ग्लोबल एस.एस. कन्सट्रक्शन लिमिटेड, मुम्बई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ़ के पंचाट (संदर्भ सं. 04/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. जेड-16025/4/2020-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 571 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2017) of the Cent. Govt. Indus.Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Indian Oil Corporation Limited, M/s. Global S.S. Construction Limited, Mumbai and their workmen, received by the Central Government on 14.07.2020.

[No. Z-16025/4/2020-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 04/2017
Registered On:- 05.06.2017

Ram Pal S/o Makar Ram R/o Village Assan Kalan,
Tehsil & District Panipat (Haryana) ...Applicant/workman

Versus

1. Indian Oil Corporation Ltd. Polymer Termination,
   Refinery Bholi, Panipat through its Authorised Person.
2. M/s. Global S.S. Construction Ltd. 12, Nishant Shopping Centre,
   Seven Bunglow, Andheri (W) Mumbai through its Authorised Person. ...Respondents/Managements

AWARD

Passed On:-11.05.2020

1. Claimant/workman Ram Pal has filed the instant claim petition under Section 2-A of the I.D. Act 1947 alleging therein that he was appointed as Machine Helper on 22.06.2014 by the Respondent/Management and was posted at M/s. Global S.S. Construction Ltd. Refinery Bholi, Panipat. The Respondent/Management fixed his salary as of Rs. 8,100/- per month with around Rs. 900/- P.F. Later on his services were shown under the respondent No. 2 who is the contractor's agency and the contract between the respondent Nos. 1 and 2 is nothing but is camouflage, which is prohibited under the Contract Labour Act (R&A) 1970. In spite of the satisfactory services of the workman respondent/management terminated his services without any reasonable cause on 18.06.2015 on flimsy grounds. Subsequently, upon his complaint to the Ld. Asst. Labour commissioner, (Central)-Karnal, Respondent/Management arrived at the settlement and appointed him again as a Machine Helper on 01.11.2015. However, on 22.06.2016 the Respondent/Management got the signature of the applicant/workman on some blank papers under the pretext of getting prepared the gate pass and subsequently, did not allow him to work and orally terminated his services again. Such type of acts comes under the definition of unfair labour practices which is a punishable offence under Section 2 ra of Schedule V of

I.D. Act 1947. The work was perennial in nature and not seasonal and the workman had been continuously working with the respondent/Management up to the time of his termination. He has completed more than 240 days in continuous services as required under Section 25(B) of the I.D. Act. It is therefore, prayed that the Management be directed to reinstate him with full back wages and continuity of service.

2. Respondent No. 1 Indian Oil Corporation Ltd. has filed its written statement, alleging therein that the workman was engaged by the contractor i.e. respondent No. 2 M/s. Global S.S. Construction Ltd. for the performance of the aforesaid contract and workman had been receiving his salary, PF, ESIC, bonus etc. from the aforesaid contractor as per Annexure R-5 colly, Annexure R-6 colly and Annexure R-7 colly. There was no employed and employee/master and servant relationship between the corporation and workman as the workman was the employee of the contractor. Hence, question of his termination by the corporation does not arise at all. The entire service condition namely appointment, attendance, wages, shift, leave ESI, EPF, bonus etc. were handled by the employed i.e. respondent No. 2 M/s. Global S.S. Construction Ltd. and he has complete control and supervision with respect to the contractual obligation and the respondent No. 2 corporation did not have any role to plain in the process. The facts alleged in Paragraph 3 can be properly answered by respondent No. 2 being the employer of the workman. It is respectfully prayed that the claim of the workman be rejected and the reference be answered in favour of respondent with costs.

3. Respondent No. 2 i.e. M/s. Global S.S. Construction Ltd. 12, Nishant Shopping Centre, Seven Bunglow, Andheri (W), Mumbai, through its authorised person, has filed its written statement alleging therein that he has not come with clean hands on this Tribunal and has concealed the true and material facts. The question reference is barred by limitation because it has not been filed within prescribed period. It is further alleged that before Asstt. Labour Commissioner (Central) Karnal, during the course of proceeding claimant has made statement that he is not interested to continue with the Management and wants to stop the proceeding before the Asstt. Labour Commissioner (Central) Karnal, even then, he has filed his claim petition before the Hon'ble Tribunal. The fact concerned with joining date, designation and salary amount of applicant is matter of record. The applicant was engaged as contractual worker by the answering respondent for completion of tender work given by the respondent No.1 for limited period, hence no appointment is required. The contract between respondent Nos.1 and 2 were genuine contract and not as is alleged by claimant. In fact, Management did not terminate the services of the complainant on 22.06.2016. The project/tender work has been completed and applicant was informed by respondent No.1 for the same vide notice dated 20.03.2016. The remaining facts alleged in the written statement are the same as is alleged in the written statement of the respondent No.1. Hence, it need not be repeated again.

4. At the stage of evidence, workman remained absent along with his counsel on so many dates, resulting the closer of evidence of the workman.

5. Learned counsel of respondent No. 1 Sh. Paul S. Saini informed that there is no need to adduce any evidence with respect to the facts alleged in the written statement as such, opportunity of both the respondents is also closed vide order dated 13.02.2020, resulting this case as no evidence case.

6. Heard the learned counsel of respondent No. 1 Sh. Paul S. Saini and perused the file.

7. The facts alleged in the claim petition is neither proved through oral evidence nor proved by any documentary evidence as such, it cannot be said that the alleged termination by respondent No. 2 is illegal, unjust and against the law due to the expiry of the contract.

8. In the absence of any cogent evidence, this Tribunal is of the considered opinion that the workman/claimant has miserably failed to prove that his services were illegally terminated by the respondent w.e.f. 22.06.2016. Hence, award is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एस. बी. आई. लाइफ इंशोरेंस कम्पनी लिमिटेड, जम्मू के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चण्डीगढ के पंचाट (संदर्भ सं. 254/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-17012/5/2013-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 254/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the industrial dispute between the management of SBI Life Insurance Company Limited, Jammu and their workmen, received by the Central Government on 14.07.2020.

[No. L-17012/5/2013-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 254/2013

Registered on: 09.05.2013

Sumit Chopra S/o Late Sh. Sat Pal Chopra Resident of
Plot No. 288, Rehari Colony, Jammu. ...Workman

Versus

1. The Managing Director, SBI Life Insurance Co. Ltd.
Turner Morrison Building, GN Vaidya Marg Fort, Mumbai-400023.
2. The Vice President (HR), SBI Life Insurance Co. Ltd.
Turner Morrison Building, GN Vaidya Marg Fort, Mumbai-40023.
3. The Area Sales Manager, SBI Life Insurance Co. Ltd. 3rd Floor,
KC Plaza, Residency Road, Jammu (J&K) ...Respondents/Managements

AWARD

Passed On:-05.05.2020

Central Government vide Notification No. L-17012/5/2013-IR(M) Dated 22/04/2013, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute for adjudication to this Tribunal:-

> **"Whether the action of the management of SBI Life Insurance Col. Ltd., Jammu representing through its Managing Director, in terminating the services of Shri Sumit Chopra S/o Late Sat Pal Chopra w.e.f. 07/05/2011, is legal and justified? What relief the workman is entitled to?"**

1. Both the parties were put to notice and workman filed its claim statement, alleging therein that he was offered the appointment as Associate-Operations by the Management in the Region (North 1) Jammu on 06.10.2008 and later, appointment letter was issued on 24.10.2008 accordingly. The workman was working to the entire satisfaction of the management and his service was confirmed on 13.04.2009 as the workman was under the period of probation from his appointment till 12.04.2009. It is pertinent to mention that prior to confirmation of the workman, on 26.02.2009, he was asked to work as Temporary Associate Sales Support at SBI Jammu AU. The workman requested on 19.04.2010 for his transfer to his original cadre i.e. as operations associates. Copy of the email dated 19.04.2010 are attached herewith as **Annexure W-5**. Workman applied for leave on 24.11.2010, 29.11.2010 and 13.12.2010 due to his illness along with treatment record but same were rejected by the Management. The Management considered the above said period as unauthorized absence and issued letter dated 07.12.2010, 13.01.2011 for calling explanation, which were duly replied by the workman. Unfortunately, Management did not allow the workman to mark his attendance and the access to the email was also denied to the workman. Ultimately Management started issuing warning letters to the workman on one pretext or the other, dated 24.2.2011, 08.03,2011, 17.02.2011 (in fact 17.03.2011). In spite of all the odds, the performance of the workman remained above board and collected a premium of Rs. Eight lacs on 5.5.2011 even then the workman was handed over a post dated cheque amount Rs.13551/- of 6.05.2011 and the services of the workman were terminated, arbitrarily, illegally and without holding any inquiry. The copy of the termination letter dated 7.5.2011 is attached herewith as **Annexure W-21**. The appeal preferred by the

workman before the Appellate Authority is of no avail. The management withheld the salary of the workman for the period of December 2010 and January 2011, and the workman filed a petition before the authority under payment of Wages Act at Jammu. The same was allowed by the learned Authority. Copy of the order dated 05.05.2012 are attached herewith as **Annexure W-23**. It is therefore prayed that the reference may kindly be answered in favour of the workman and against the management and the order of termination dated 07.05.2011 be set being illegal and the management be directed to reinstate the workman from the date of order with continuity of service and other benefits.

2. Management SBI Life Insurance Company Limited filed his written statement alleging therein that claim petition is not maintainable as claimant is not workman within the Section 2(S) of the Industrial Disputes Act, 1947. Management has admitted the appointment of workman by issuing appointment letter and confirmation by the Management. It is alleged that attendance and performance of the workman has been quite unsatisfactory since November 2010 and he remained absent from office from November 23, 2010 to January 31, 2010 without proper sanction of leave. Thereafter, he started attending the office and marking attendance from February 1, 20100, without permission from his Superior Officer. Company has given him sufficient warnings and reminders to report the office, vide letters dated 07.12.2010, 13.01.2011 and 08.03.2011 but he remained absent, and did not tender any explanation or reasons for his unauthorized absence and misdemeanour. The medical reports sent by the workman were found not satisfactory and he was directed to submit the medical certificate from the Government Medical College Hospital, Jammu, but he did not comply with the said requirement. The complainant misbehaved in a manner unbecoming of an employee by asking his brother to speak to the Area Manager who threatened and used abusive language in his conversation with the Area Manager. Workman remained absent unauthorizedly for a continuous period for more than 30 days. He was terminated vide order dated 07.05.2011 for violation of the code of conduct prescribed under Clauses 9(1), 9(1)(a) and 9(3)(c) of the terms and conditions of service of directly recruited officers of the Company. Accordingly Management sent an amount of Rs.13,551 vide cheque bearing No.096954 dated 06.05.2011 along with the termination letter towards three month's basic pay in lieu of notice period and the receipt of the same is admitted by the petitioner in the statement. Further amount of Rs.14,596/- was also paid by the cheque No. vide 100001 dated 03.09.2011 towards full and final settlement. Mr. Sumit Chopra claimant was not reporting for work for a period of two months (December 2010 & January 2011), the salary for those two months was not paid to the petitioner. Mr. Sumit Chopra had filed a complaint before the Hon'ble Labour Commissioner Jammu and the Company had deposited Rs.25,644/- vide cheque bearing No.371432 dated 03.07.2012 under protest. However, the work of conciliation did not take place between the parties before the Hon'ble Labour Commissioner. The termination of Mr. Sumit Chopra was legal and as per service rules and conditions mentioned in the appointment letter itself. The petitioner is not entitled for any relief as claim petition being frivolous and vexatious and hence is liable to be dismissed.

3. Workman Sumit Chopra has submitted his affidavit Exhibit A1 and proved Annexure W-1 to W-23 as part of his statement. During the course of cross-examination this witness has stated that he did not perform his duties from November 2010 and joined his duty on 2nd Feb., 2011 because of his illness but Manohar Lal Region Manager did not permit him to join the duty. Workman has further admitted that he did not ask permission for rejoining his duty in writing. It is further admitted that content of Annexure 13 as well as terms and conditions of service which is Exhibit R2. He has admitted that he did not submit the report of Government Hospital as well as fitness certificate. This witness further admitted that management has given him Rs.13,551/- along with the termination order on 06.05.2011 and subsequently Rs.25,644/- in pursuance of the order passed by Labour Commissioner in July 2012.

4. Management of SBI Life has examined Subash Chander Credit Life Manager SBI Life Insurance Company who has submitted his affidavit dated 18.01.2019 but none turned-up on behalf of the workman to cross-examine this witness. Hence, opportunity of the workman to cross-examine this witness is closed and the facts alleged in affidavit of witness is unrebutted.

5. Heard the argument of learned counsel of the workman Arun Batra as well as learned counsel of the Management Shri. Rajnish Malhotra and I have gone through the records as well documents.

6. There is no dispute about preposition of law that onus to prove that workmen/claimants were in the employment of management is always on the workmen/claimants and it is for the workmen to adduce evidence to prove factum of their employment with the management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that they worked with the employer for 240 days or more in a calendar year. In this regard reference may be made to ***Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Mehgajibhai Gavda (2012) 1 SCC 47.***

7. There is hardly any dispute with the preposition of law as propounded in the aforesaid case. However, the factual scenario in the present case is bit different, inasmuch as the management in its written statement has clearly admitted the factum of employment of the claimant inasmuch as it has been stated that the workman was appointed as Associate-Operations vide letter dated 24.10.2008 which is Annexure W-2 subject to the terms and conditions mentioned in the appointment letter as well as terms and conditions of Service Rules and worked till his termination vide letter dated 07.05.2011 which is Annexure W-21. As such, it clearly establishes relationship of employer-employee between the management and claimant. In this regard, reference can be made to the decision in the case of ***Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532,*** wherein, the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as follows:-

> ***"The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman."***

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. Thus, nature of appointment or source of appointment is not relevant to be a "workman" within the Industrial Disputes Act, 1947.

8. Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the termination of the workman/claimant is in accordance with the provisions of the law, if any and under the provision of Industrial Disputes Act, 1947. It is a specific case of the claimant/workman that he was engaged as Associate-Operations by the management and confirmed vide letter dated 26.02.2009 Annexure W-4. The affidavit filed by the claimant/workman is in the line with the averments made in the claim petition. He has also filed on record copies of letters about his illness for leave and letters sent by the management for his non-attendance in the management which shows that there are so many correspondences in the form of applications and counter-reply by either parties.

9. The question which is relevant for consideration is whether termination of the claimant/workman Sumit Chopra is in accordance with law? In this connection, learned counsel of the workman contended that being a permanent employee, management ought to mark an enquiry to find out the reason of absence of the workman in the service and due consideration should have been given about the inability of the workman to serve the management due to his continuous illness for which a number of letters has been sent to grant the leave attached with the claim statement. Learned counsel further argued that management has neither issued any show cause notice with respect to the submission of explanation of workman nor conducted any enquiry and out rightly terminated the services of the workman vide termination letter dated 07.05.2011 Annexure W-21. Learned counsel of the workman further contended that the interest of workman is protected by the Article 309 of the Constitution of India as well as under Section 25 of the ID Act. Contrary to this, learned counsel of the management contended that Article 309 of the Constitution is not applicable with respect to the claimant/workman as he was not a public servant and compliance of Section 25-F is duly made in the form of notice as well as three months salary accompanied with the notice which is accepted by the workman as per his own statement made during the course of cross-examination. In this respect, learned counsel of the management has placed reliance in the case of ***Ajit Kumar Nag Vs. G.M.(P.J.) Indian Oil Corporation Ltd. Haldia & Ors., arising out of Civil Appeal No. 4544 of 2005 decided on 19.09.2005*** and ***Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors., arising out of Civil Appeal No. 933 of 2006, decided on 02.02.2006.*** Learned counsel of the management further argued that appointment of the workman was contractual as per the terms and conditions in the appointment letter Annexure W-2 as well as terms and conditions of service of directly recruited officers of SBI Life Insurance Company Rule 9 Sub-Clause 1, 2 and 3 as is specifically incorporated in the letter of appointment.

10. The first question which arises for consideration in the light of argument advanced by learned counsels is whether the workman is a public servant? There is no doubt that management-SBI Life Insurance Ltd. is neither government nor workman Sumit Chopra is a public servant in the light of the proposition laid down by the Hon'ble Supreme Court in the case of ***Ajit Kumar Nag Vs. G.M.(P.J.) Indian Oil Corporation Ltd. Haldia***

& Ors.(supra) and ***Union Public Service Commission Vs. Girish Jayanti Lal Vaghela & Ors.(supra).*** In fact, the workman was serving in a limited company as per terms and conditions mentioned in the letter of appointment and rules framed therein for the respective officers. In this respect, Hon'ble Supreme Court in the case of ***Roshan Lal Tandon Vs. Union of India, AIR 67, Supreme Court page 89,*** held in Para 6 as follows:-

> ***"6.....It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:***
>
> ***"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has seen fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy.; in such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status." (Salmond and Williams on Contract, 2nd edition, p.12)"***

11. Similarly, the Hon'ble Supreme Court in the case of ***Dinesh Chandra Vs. State of Assam, AIR 1978 SC 17***, has held in Para 12 as follows:-

> ***"12. ..... It goes without saying that in many employments, whether of private limited companies or public companies, contracts of employment are executed containing a term for termination of employment by notice. Such cases of contractual employment are different from those of Government employees whose employment is a matter of status and not of ordinary contract. The conditions of service of a Government servant are regulated by statute or statutory rules made under Article 309 of the Constitution. ....."***

12. On the basis of the above preposition of law, it is crystal clear that condition of service of the workman has to be regulated by the terms and conditions mentioned in the letter of appointment as well as terms and conditions of Service Rules prescribed for SBI Life Insurance Corporation Ltd. Officers. It is pertinent to mention that workman was a contractual employee and he cannot be treated as public servant, having protection of Article 309, Article 301 and Article 311 envisaged in the Constitution of India. Hence, illegality of termination of workman has to be seen in the light of the terms and conditions of appointment letter and Service Rules therein. In this respect, the condition 11 and 16 mentioned in the appointment letter are relevant which runs as follows:-

> ***"11. Except as provided otherwise in this letter, your employment may be terminated at any time by either party without assigning any reason, by either party giving in writing the minimum required notice of one month during probation and three months after confirmation. However, if your employment is terminated by the Company without any or sufficient notice, you shall be paid, basic salary due in lieu of the notice or insufficient notice.***

16. You will be governed by the Terms and Conditions of Service of Directly Recruited Officers as approved by the Board from time to time."

13. Similarly, the terms and conditions of Service of Directly Recruited Officers of SBI Life Insurance Company are relevant because Rule 9 Sub-Clause 1, 2 and 3 of SBI Life Insurance Company deals with the conduct of the employees of the SBI Life Insurance Company which runs as follow:-

"(1) All officers of the Company shall conform to and abide by the terms and conditions and other rules/orders that may be framed/issued by the Company from time to time.

(2) All officers will be responsible for the safekeeping and return, in good condition and order, the Company's property, which may be in use or in the custody of the officers.

(3) Every officer shall:

(a) faithfully carry out all lawful and reasonable orders and directions, which may from time to time be given to him/her by a superior.

(b) undertake and perform duties of the Company in such capacity and in such place as may be directed by the Company from time to time.

(c) at all times, take all reasonable and possible steps to ensure and protect the interest of the Company and discharge his/her duties, with utmost integrity, honesty, devotion and diligence and do nothing that is unbecoming of an officer of the Company."

14. In the background of above legal proposition and admitted terms and conditions of service of the workman, question remains to be seen whether order of termination dated 07.05.2011 by the management could be treated as illegal and unjustified? The cross-examination of the workman in this respect is relevant where he has admitted in so many words that at the time of proceeding on sick-leave, he had not asked for permission in writing because there was no Area Manager at that time. Thus, it is crystal clear that workman had not taken permission for his sick-leave. This witness has further stated that he was bound by the terms and conditions of service as per Ex.R-2(appointment Letter). Sumit Chopra has further stated that he did not submitted any medical report, government hospital as well as fitness certificate. Question which arises for consideration is that if he was really ill, as is mentioned in the medical documents submitted by the workman then fitness certificate is equally important to join the services of the management. This witness has not assign any reason as to why he did not submit the medical fitness certificate to the management. Thus, it is admitted and proven fact that workman remained absent for more than two months without seeking permission of the management, effecting the work of the management. Rule 5(1) of the terms and conditions of SBI Life Insurance Ltd. is crystal clear that ***if the officer for any reason has not been attending to his/her duty in company continuously after exhaustive of leave for continuous period of 30 days, the management has right to terminate the services of the Officer.*** As per the argument of the learned counsel of the management by virtue of Service Rule 5, the workman was terminated by the management as such, he cannot say that any departmental enquiry is required in compliance of the principle of natural justice.

15. Learned counsel of the management further contended that the termination of the workman by the management is neither illegal nor unjustified by virtue of the non-compliance of Section 25-F of the Industrial Disputes Act, 1947. In this respect, learned counsel has drawn my attention towards the appointment letter issued by the management and terms and conditions mentioned therein. As per Para 5 of the appointment letter Ex.W-2, management has right to terminate the services of an employee at any time either without assigning any reason by either party giving in writing the minimum required notice of one month during the probation and three months notice after confirmation. As per Para 5, if an employee is terminated by the management, he shall be paid basic salary due in lieu of notice or insufficient notice. According to the learned counsel of the respondent-management, this condition is clearly complied by the management and it is accepted by the workman during the course of cross-examination. Workman Sumit Chopra has admitted in so many words that he received Rs.13,551/- along with termination order dated 06.05.2011. This witness has further stated that he had received Rs. 25,644/- in pursuance of the order of Labour Commissioner in July 2012. Witness of the management Subhash Chander, Credit Life Manager, has stated in his affidavit that a n amount of Rs.13,551/- vide cheque No. 096954 dated 06.05.2011 was sent along with the termination letter towards three months basic pay in lieu of notice period. This witness has not been cross-examined by the learned counsel of the workman and the facts alleged in the affidavit remains unrebutted though, this fact is admitted by the workman in his cross-examination also. To my mind, the condition enshrined in Para 11 of the appointment letter has been duly complied by giving basic salary of three months amounting Rs.13,551/-. So there is no need for any notice with respect to the termination as is required by Section 25-F of the Industrial Disputes Act, 1947. This Tribunal is in consonance with the argument of the management that if workman has any grievance with respect to any

amount along with termination letter, then he should not have accepted the amount and should have raised complaints before the management.

16. Having regard to the legal position as discussed above and the facts of the case, this Tribunal is of the firm view that management had not violated the principles of Article 309, Article 310 and Article 311 of the Constitution of India, being a private establishment, having its own fund and is governed by its own rules and regulations and the termination of the workman/claimant by giving a show cause notice along with basic wages of three months and admission made by the workman is in consonance of the legal proposition as discussed above. This Tribunal is of the considered opinion that order passed by the management is in accordance with the Rules and Regulations prescribed in the appointment letter as well as in Service of Directly Recruited Officers of SBI Life Insurance Company is just and fair and the workman is not entitled for any relief and the reference is answered accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच.डी.एफ.सी. स्टैन्डर्ड लाइफ इंशोरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 58/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-17012/5/2012-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2012) of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of HDFC Standard Life Insurance Company Limited and their workmen, received by the Central Government on 14.07.2020.

[No. L-17012/5/2012-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 58 OF 2012

Dated Bhubaneswar, the 23rd April, 2020

Present: Shri B.C. Rath, Presiding Officer,
C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The Manager,
Regional Human Resource,
HDFC Standard Life Insurance Company Ltd.,
794, Saheed Nagar,
3rd Floor, Bhubaneswar, Orissa. ...First party management

AND

Shri Pradeep Kumar Samal,
S/o. Shri R.C. Samal, Plot No. 227, Unit – 9,
Bhoi Nagar, Baya Baba Math Lane,
Bhubaneswar, Orissa. ...Second party workman

Appearances:

Shri B.M.Pattnaik, Advocate. .. For first party management

Shri Subrat Miahra, Advocate. .. For second party workman

AWARD

The Government of India, Ministry of Labour & Employment have referred the industrial dispute for adjudication vide its Order No. L-17012/5/2012-IR(M) dated 22.5.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act,1947 (14 of 1947) (hereinafter referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action of the management of HDFC Standard Life Insusurance Company Ltd., Bhubaneswar, in terminating the services of Shri Pradeep Kumar Samal, Ex-Assistant Branch Manager vide order dated 16.6.2011 without giving proper compensation package including LTA benefits, etc. is legal and justified ? What relief the workman is entitled to ?"

2. The case of the second party workman as emerged from his statement of claim is that he was appointed as Financial Planning Officer by the first party management of HDFC Standard life Insurance Company Ltd. and he joined in the post on 23.8.2007 at Keshari Complex Branch, Bhubaneswar. In September, 2009 he was promoted to the post of Business Development Manager and there after to the post of Assistant Branch Manager in July, 2010. He discharged his duty with all sincerity and devotion with utmost satisfaction of his authority without any adverse comment/remark till his service was terminated on 16.6.2011 by the Manager, Regional Human Resource, Bhubaneswar. It is his contention that although he was designated as Officer or Manager but, nature of his duties and responsibilities were like a 'workman' as defined under Section 2(s) of the Act. At no point of time he was entrusted with any managerial or administrative or supervisory work. He was not having any independent power and authority to exercise. No subordinate staff was attached to him. Even though, he worked for more than 240 days continuously and uninterruptedly preceding to his termination, he was not paid any retrenchment compensation. His juniors were allowed to continue in service and the principle of 'last come first go' was not followed while he was discharged from service. Termination of his service being in violation of the provisions of Section 25-F, 25-G and 25-H of the Act was illegal and unjustified. Hence, he raised a dispute culminating the present reference as stated earlier.

3. The first party management has contested the claim taking a stand that the disputant being in the job of managerial and administration is not a 'workman' as defined under the Act. As per the nature of work entrusted to the disputant he was to promote the business of the Branch and due to his unsatisfactory performance he failed to do his duty as assigned in the capacity of Assistant Branch Manager. His service was terminated as per Clause 10(a) of his appointment letter wherein and whereby the engagement can be terminated by paying compensation for three months in lieu of notice. Accordingly the service of the disputant was terminated with effect from 16.6.2011 with full and final settlement of his dues and the disputant having accepted such settlement has no right to raise the dispute. Hence, prayer has been made by the first party management for rejection of the statement of claim.

4. In view of the aforesaid pleadings of the parties, the following issues were settled for just adjudication of the dispute.

ISSUES

(i) Is the reference maintainable ?

(ii) Is the disputant a 'workman' as defined under the ID Act ?

(iii) Whether the action of the management of HDFC Standard Life Insurance Co. Ltd., Bhubaneswar in terminating the services of Shri Pradeep Kumar Samal, Ex-Assistant Branch Manager w.e.f. 16.6.2011 without providing compensation package was legal and justified ?

(iv) If not, what relief the workman is entitled to ?

5. Both the parties to the dispute/reference have adduced oral as well as documentary evidence. The disputant workman has examined himself as W.W.1 and relied upon the documents like copies of the office Order dated 20.8.2007, appointment letter of the workman dated 27.11.2007, promotion letters dated 23.10.2009 & 4.9.2010 and termination letter of the workman marked as Ext. 1 to Ext. 4 to establish his claim whereas, the management has examined its Manager (HR) as M.W.1 and filed copies of the letter dated 4.9.2010 in regard to promotion of the workman, manual in regard to Key task and activity for the Branch manager, list of employees of the management working under the workman and full and final settlement with the workman marked as Ext. A to Ext. D to refute the claim of the disputant.

FINDINGS

6. First coming to the objection as raised by the management that the disputant is not a 'workman' as per the Act, it may be stated here that law is well settled that whether an employee was a 'workman' or not has defined in Section 2(s) of the Act, the designation of employee has no bearance. Rather, it is to be determined with reference to the main duty of the concerned employee. If, the main work of the employee is manual, clerical, technical, operational, unskilled or skilled in nature, the mere fact of being supervisory or other work is being done by the employee incidentally will not make the nature of work of the employee managerial or administrative. In the case at hand, the disputant was initially joined in the establishment of the first party management in a capacity of Financial Planning Officer and after his two promotions he was holding the post of Assistant Branch Manager when his service was terminated. It is claim of the disputant workman that he was not having any managerial or administrative power although he was designated as Assistant Branch Manager. His job was clerical in nature and there was none under him to work. He was to report his performance to his higher authority. It is elicited from his cross-examination that target was fixed for him for the purpose of marketing and he was required to prepare his strategy to reach the target. The management witness No.1 (M.W.1) read with Ext. B reveals that the nature of duty of the disputant workman was to implement plans with specific focus towards need based selling and activity management. He was to support the business planning and to implement the same. He is to monitor and to evaluate the achievement of sales target against expectations. He was to interact regularly with customers and to ensure proper service to the client etc. From the above evidence of the parties, it is crystal clear that the nature of job of the disputant was mainly to market the insurance policy of the management Bank. There is no satisfactory or sufficient evidence to show that in addition to marketing of insurance policy, the disputant was required to do any supervisory or managerial work. No evidence is also placed to establish that any employee of the first party management was under the control of the disputant workman or he has any independent authority or power to exercise in the office even though he was designated as Assistant Branch Manager when his service was terminated. On the other hand, M.W.1 has admitted in his cross-examination that as per Exts. 5, 6 and 7, (which are filed by the disputant workman) the disputant is an Agent. According to him, agents are hired for marketing of insurance policy. Though Ext. B has been filed by the management to show the nature of job entrusted to the disputant, it is admitted by M.W.1 that there is no material to suggest that Ext. B (task of disputant) was served to the disputant either at the time of his appointment or during his promotion or in any appoint of time. Thus, analyzing the totality of evidence advanced by the parties it can be safely inferred that the disputant was doing the job of sale and sale promotion of insurance policy of the management and he was required to achieve a target in selling the policy. Be that as it may, as per the settled principle of the Hon'be apex Court in the case of S.R. Adyanathaya Vrs. Sandooz India Ltd. 1994(5) SCC 767, sale promotion employee is a workman provided he is not engaged in managerial/administrative work.

7. Coming to the stand of the parties on the gesture of termination of the disputant workman, there is no serious dispute to the fact that the disputant was ever given any prior notice for his termination or he was issued with any show cause as to his unsatisfactory performance in his duty or job. He was not given any retrenchment compensation for the period of his employment under the management. His wages for three months was paid after termination of his service. Though, the management claims to have paid all dues and final settlement to the disputant the payment is apparently made after termination of his service on 16.6.2011. Therefore, provision of Section 25-F of the Act does not seem to have complied with before termination of the disputant. Even if, it is accepted that the management has a right keeping in view the term and condition of appointment letter issued to the disputant on 27.11.2007 to terminate the disputant workman without notice and without assigning any reason by paying compensation of three moths in lieu of notice, he is required to comply the provision of Section 25-F of the Act. Having violated the said provision, the management can be safely said to have terminated the service of the disputant workman illegally. Hence, the termination of the disputant cannot be sustainable in the eye of law as per the provision of Section 25-F of the Act.

8. Coming to the issue of relief to which the benefit is entitled, it may be stated here that reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation in stead of reinstatement has been held to meet the ends of justice in the recent past. However, the Court or the Tribunal has to consider a horst of factors like the nature of appointment, period of engagement, facts and circumstances under which the termination was made etc. while directing the reinstatement of the workman or granting compensation in lieu of reinstatement. In the case at hand, the disputant workman has served around 4 years in the establishment of the management. His termination was allegedly due to his non-performance as to the expectation of the management. The order of reinstatement at this stage and circumstance may not be conducive for the disputant to work under the employer management. No satisfactory or credible evidence is led by the disputant to establish that he is still unemployed. Having regard to the above facts and circumstances, in my

considered view, compensation of Rs. 5,00,000/- in lieu of reinstatement with or without back wages would meet the ends of justice in the instant case at hand.

9. For the reasons mentioned above, the termination of the second party workman without providing his compensation is not legal and justified and as such, the management is directed to pay a compensation of Rs. 5,00,000/- (Rupees five` lacks only) to the second party workman within two months from the date of Notification of the Award failing which the workman is entitled to interest @ 7% (seven percent) per annum on the compensation amount with effect from the date of the Award till its realization.

Accordingly reference is answered and Award is passed.

Dictated and corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 14 जुलाई, 2020

का.आ. 574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक एशोरेंस एण्ड एलाइन्सीस, आई.सी.आई.सी.आई. प्रोडेन्शल लाइफ इंशोरेंस कम्पनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 64/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.07.2020 को प्राप्त हुआ था।

[सं. एल-17012/6/2012-आईआर (एम)]

ए. के. सिंह, अवर सचिव

New Delhi, the 14th July, 2020

S. O. 574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 64/2012 of the Cent. Govt. Indus.Tribunal-cum-Labour Court, Bhubaneshwar as shown in the Annexure, in the industrial dispute between the management of Bank Assurance and Alliances, ICICI Prudential Life Insurance Company Limited and their workmen, received by the Central Government on 14.07.2020.

[No. L-17012/6/2012-IR (M)]

A. K. SINGH, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 64 OF 2012

Dated Bhubaneswar, the 16th April, 2020

Present: Sri B.C. Rath, Presiding Officer,
CGIT-cum-Labour Court, Bhubaneswar

Between:

The Area Manager, Bank Assurance and
Alliances, ICICI Prudential Life Insurance
Company Ltd., Plot No. 10p & 12p, 2nd Floor,
City Marg, Baramunda, Bhubaneswar – 751003,
Dist. Khurda. ...First party management

AND

Sri Deepak Kumar Bastia
S/o. Late Chaitanya Bastia, Plot No. 1159/1,
Khandagiri Bari, Naka Gate,
Bhubaneswar ...Second party workman

Appearances:

Sri S. Sastry, Advocate. : For First Party management.

Sri Subrat Mishra, Advocate : For Second party workman.

AWARD

The Government of India, Ministry of Labour & Employment have referred the industrial dispute for adjudication vide its Order No. L-17012/6/2012-(IR(M) dated 4.6.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dipsutes Act, 1947 (14 of 1947) (hereinafter referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action on the part of the Area Manager, Bank Assurance and Alliances, ICICI Prudential Life Insurance Company Limited, Bhubaneswar in terminating the services of Shri Deepak Kumar Bastia, Ex-Sales Manager without giving show-cause notice and proper compensation is legal and justified ? What relief Shri Deepak Kumar Bastia is entitled to ?"

2. The case of the second party disputant workman is that he was appointed as Bank a ssurance Officer on 2.2.2005 by the first party management i.e. ICICI Prudential Life Insurance Company ltd. He joined his duties on 7.2.2005 and discharged his duty to utmost satisfaction of his authority for which he was promoted to the post of Financial Service Consultant on 1.9.2005. Thereafter he was promoted to Financial Services Manager on 1.7.2006 and then promoted to the post of Sales Manager on 15.2.2008. It is his claim that his nature of duties and responsibilities were like a workman within the definition of Section 2(s) of the Act i.e. clerical in nature and the designation of officers or Sales Manager has no way concerned to keep him out of purview of 'workman' as defined in the Act. Though he was designated as a Manager, he was never entrusted any managerial work or conferred with any power of supervisory to control any other staffs of the management Bank. On 22.5.2010 he was verbally informed that his service would not be retained with immediate effect and thereafter he was not allowed to work. According to him, though he had worked for more than 240 days continuously and uninterruptedly in every calendar year from the date of his appointment till his termination, provisions of Section 25-F of the Act was not complied with before his retrenchment. He was never communicated about any deficiency in his performance as an employee of the management Bank. No show cause was invited or any departmental action was initiated before retrenching him on the ground of his performance. His disengagement/retrenchment without compliance of the provisions of the Act is illegal and unjustified. Hence, he raised a dispute before the labour machinery. The failure of conciliation effort before the labour machinery has culminated to the reference as mentioned earlier.

3. The first party management has contested the statement of claim with pleadings that the disputant being posted as an Officer conferred with managerial power is not a 'workman' as defined in the Act. As such, the dispute raised by the disputant as well as the reference is not maintainable in the eye of law under the Act. The disputant was bound by the terms and conditions of his employment as well as Employees Service Rule of the management Bank. As per the term and condition of his employment and provisions of the Employee Service Rule, the disputant can be retrenched or disengaged for his poor performance without assigning any reason or notice or salary in lieu of the notice. According to the management, the service of the disputant was terminated on the ground of his non performance and the management made full and final settlement of the dues of the disputant when he was retrenched from service. It is also been claimed that the disputants preferred a suit for permanent injunction in the Civil Court against his termination and the said suit having been with-drawn on his own volition, no further cause of action or right is conferred with the disputant to raise the present dispute. Hence, prayer has been made by the first party management Bank for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues have been settled for effective and proper adjudication of the dispute.

ISSUES

(i) Whether the action on the part of the Area Manager, Bank Assurance and Alliance, ICICI Prudential Life Insurance Company Limited, Bhubaneswar in terminating the services of Sri Deepak Kumar Bastia, Ex-Sales Manager without giving show cause notice and proper compensation is legal and justified ?

(ii) What relief Sri Deepak Kumar Bastia is entitled to ?

5. Both the parties to the dispute/reference have adduced oral as well as documentary evidence. The disputant workman has examined himself as W.W.1 and relied upon the documents like copies of the appointment letter dated 2.2.2005, promotion letters dated 24.10.2005, 2.8.2005 and 28.5.2008, termination letter dated 14.5.2010, original envelope addressed to the second party workman and original letter of the management dated 14.5.2010 addressed to the second party workman marked as Ext. 1 to Ext. 4/1 to establish his claim whereas, the management has examined its Senior Officer as M.W.1 and filed copies of letter of authority dated 7.11.2016, appointment letter dated 2.2.2005, promotion letter dated 2.8.2016, remuneration details dated 28.5.2008, termination letter dated 14.5.2010, Employee Service Rules, 2009, full and final

settlement letter, and Order dated 27.10.2010 passed by Civil Judge (Jr. Division), Bhubaneswar marked as Ext. A to Ext. H to refute the claim of the disputant.

FINDINGS

6. First coming to the issue of maintainability as raised by the management on the ground of the disputant being not a 'workman' as defined in the Act, it may be stated here that the disputant was initially joined on a designation of Bankassurance Officer and he was holding a post with designation of Sales Manager under the management Bank when his service was terminated. Thus, the relationship of employment of the disputant with the management Bank is not at all disputed except the nature of work/job discharged by the disputant when he was retrenched. Law is well settled that whether the employee was a 'workman' as defined in Section 2 (s) of the Act has to be determined with reference to his principal nature of duty and function. The designation of the employee has nothing to do with such determination. The same is to determined with reference to the facts and circumstances of the case and the materials on record as it is set out by the Hon'ble Apex Court in a catena of decisions that designation of an employee is not much of important and what is important is the nature of duty being performed by him. The determinative factor is the main duty of the concern employee and not some work incidentally done. In other wards, what is no subsistence, the work which the employee does or what is in subsistence he is employed to do. If the employee is mainly doing supervisory/managerial work but, incidentally or for a purpose of exigency or a fraction of time, thus also some manual or clerical work, the employee should be held to be doing supervision work of conversely, if the main work of the employee is manual, clerical or technical in nature, the mere fact of doing some supervisory or other work is being done by the employee incidentally will not make the nature of work of the employee supervisory. Similarly, where an employee has multifarious duties and a question is raised whether he is a 'workman' or not, the Courts must find out what are the primary and basic duties of the person concerned. If, he incidentally asked to do some work, may not be necessarily in tune with his basic duty, his additional duty cannot change the character and duties of the person concerned. Thus, the dominate purpose of employment is to be taken into consideration while determining the status and character of an employee.

7. Coming to the case at hand, the disputant workman has asserted in his evidence-in-chief that although he was designated as a Manager but, nature of his duties and responsibilities were clerical, manual and other incidental job. He was not entrusted with any managerial power and he was not exercising any independent power and authority. The appointment letter and the promotion order filed by the disputant do not disclose the nature of work or duty entrusted to the disputant when he was discharging his duty either in capacity of Bankassurance Officer or Sales Manager. Though, the disputant is cross-examined at length by the management, nothing is elicited to establish that he was doing managerial or supervisory work being as Sales Manager. Though, the Employee Service Rules, 2009 (Ext. F) of the management Bank defines the 'Manager' is a person with supervisory and administrative responsibilities and functions for the team or a work unit of which an employee forms part, it is elicited from the cross-examination of M.W.1 that the disputant was reporting to his Area Manager and he was supposed to work under the supervision and control as well as with consultation of his Area Manager. The job of the disputant was to generate and to promote the sales and business target which is fixed from period to period. He was required to sale Life Insurance Policy. He was collecting certain information from the customers through different forms and he was required to submit the same to the management. The management has not produced any document except the Employee Service Rules to establish the power of the Manager and to show that the disputant was performing supervisory work. No evidence is led by the management to show that any other employees were working under the direction and supervision of the disputant. Mere defining in the Employee Service Rules that the Manager is the person with supervisory and administrative responsibilities/functions does not make the nature of job of a designated Manager as supervisory in character. On the other hand, if the oral assertion of W.W.1 and oral elicitation of M.W.1 as described above are taken into consideration, It can be said that the nature of work performed by the disputant was clerical and technical and he was required to promote sale of life insurance policies and to have inter-action with the policy holders of the Bank. Hence, he can be held to be a 'workman' as defined in the Act.

8. The other objection to the maintainability of the reference is that the disputant preferred a Civil Suit for permanent injunction in the Civil Court and the said suit having been with-drawn unconditionally, the disputant is estoppeled to raise a further dispute in the matter. Admittedly, the disputant preferred a Civil Suit earlier and with-drew the same before raising the present industrial dispute. The Civil Suit was not decided on merit. When, there is a cause of action and specific provision under the Act to raise an industrial dispute on account of the removal/retrenchment being an industrial dispute, the mere fact of filing of a Civil Suit and subsequently with-drawl of the same cannot make the reference redundant. That apart, the suit was not reached to its finality and the bar, if any, under the provision of the CPC it applicable to a subsequent suit only. There is no bar to the disputant to raise a dispute under the Act. On the other hand, a Civil Court is not competent to entertain a suit under the I.D. Act. When, the employer and employee relationship between the parties is admitted and the

dispute is apparently arisen out of termination of service of the disputant, there is no illegality or irregularity for referring the dispute for its adjudication under the provision of the Industrial disputes Act. Hence, the objection raised by the management in this regard has no merit for consideration.

9. Coming to the main issue of legality of the termination order, it is found that the disputant was in continuous and uninterrupted service under the management Bank from 7.2.2005 to 14.5.2010. Admittedly, the disputant was terminated by the management as his performance was not up to the satisfaction. No departmental action or proceeding was initiated before termination of the disputant. No evidence is emerging from the management Bank to establish that the disputant was ever communicated or invited show cause for his non performance. There is also no evidence on the part of the management to establish that the disputant was extended prior notice or notice pay in lieu thereof or retrenchment compensation before his termination. It is not established also that the disputant was removed by following the principles of 'last come first go' as provided in Section 25-G of the Act. Be that as it may, the termination of the disputant from service is against the provisions of Section 25F and 25-G of the Act for which the said termination is to be held illegal and unjustified.

10. Coming to the relief to which the disputant is entitled, it is note worthy to say that earlier view of the Hon'ble Apex Court articulated in many decisions is that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages could ordinarily followed. However, in recent past, there has been a shift in the legal position and the Hon'ble Apex Court have taken a view consistently that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given facts of situation, even though the termination of an employee is in contravention to the prescribed procedure and compensation instead of reinstatement has been held to meet the ends of justice. While granting a relief for wrongful termination of service of an employee/workman, the Court/Tribunal has to take the hoast of factors, inter-alia manner and method of appointment, nature of appointment, length of service etc. into consideration. Of course, if a case has to be decided on its own facts and circumstances. In the case at hand, the disputant served under the management Bank from 7.2.2005 to 14.5.2010 i.e. for a period of five years. It is elicited from the cross-examination of the disputant that he joined as Junior Assistant in the Department of Agriculture on 28.5.2011 and he is drawing emoluments of around Rs.33,500/- per month. Be that as it may, the disputant was found unemployed for a period of one year. Undoubtedly, salary package of the disputant under the employment of the management Bank was better than the present one. Having regard to all the above factors, a compensation of Rs.4,00,000/- instead of reinstatement with back wages would meet the ends of justice in the reference.

11. Accordingly, the action on the part of the management Bank in terminating the services of the disputant workman without following the mandatory provisions of the Act is illegal and unjustified. Hence, the disputant workman is entitled to a compensation of Rs.4,00,000/- (Rupees four lacks only) in lieu of reinstatement and back wages. The management Bank is directed to implement the Award within a period of two months from the date of its Gazette Notification failing which, the amount shall carry interest @ 7% (seven percent) per annum till its realization.

Reference is answered and Award is passed accordingly.

Dictated and corrected by me.

B.C. RATH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 47/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे ।

[सं. एल-40012/56/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 47/2014) of the Central Government Industrial Tribunal-cum -Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (HP). & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/56/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 47/2014

Registered On:-01.01.2015

1. Kaushal Singh, S/o Late Sh. Karam Dass, R/o Village Khamaru, Post Office Marothi, Tehsil Karsog, District. Mandi (HP).
2. Bhupinder Kumar S/o Sh. Seva Nand, R/o Village Kheel, Post Office Dharmour, Tehsil Karsog, District Mandi (HP).
3. Jai Kumar, S/o Sh. Narain Dass, R/o Village Pipli, Post Office Jassal, Tehsil Karsog, District. Mandi (HP).
4. Manohar Lal, M/o Dadamu Devi, R/o Village Jhaloug, Post Office Pressi, Sub-Tehsil Nihri, Distt. Mandi (HP).
5. Bodh Raj, S/o Sh. Goverdhan Ram, R/o Village Fegal, Post Office Pressi, Sub-Tehsil Nihri, District Mandi (HP).
6. Naresh Kumar, S/o Sh. Padam Dev Sharma, R/o Village & Post Office Mahog, Tehsil Karsog, District Mandi (HP).
7. Dharma Singh, S/o Sh. Paras Ram, R/o Village & Post Office Sainj Bagra, Tehsil Karsog, District Mandi (HP).
8. Hem Raj, S/o Sh. Bhagat Ram,. R/o Village Dohra, Post Office Balag, Tehsil Sundernagar, District Mandi (HP).
9. Ganga Dass, S/o Sh. Parma Nand, R/o Village Chanog, Post Office, Alsindi, Tehsil Karsog, District Mandi (HP).
10. Tek Chand, S/o Sh. Moti Ram, R/o Village & Post Office, Brokhari, Sub-Tehsil Nihri, District Mandi (HP).
11. Krishan Lal, S/o Sh. Hari Ram, R/o Village Sopa Seri, Post Office Kunhho, Tehsil Karsog, District Mandi (HP). ...Workmen

Versus

1. The Chief General Manager, BSNL, Shimla (HP).
2. General Manager, BSNL Ltd.(T) Mandi, District Mandi (HP).
3. Sub-Divisional Engineer (SDO), BSNL Ltd. Karsog, District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/56/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

"Whether the action of the management of BSNL in terminating the services of workmen without following the procedure laid down under Section 25-F of ID Act 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent no3(SDO) Karsog and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Kushal Singh	Pangna (Year 2002) (Rs.245/-)	12 years	30.04.2013
2	Bhupinder Kumar	Churag (Year 2002) (Rs.459/-)	12 years	30.04.2013
3	Jai Kumar	Jassal (Year 2000) (Rs.231/-)	13 years	01.05.2013
4	Manohar	Bandli (Year 2001) (Rs.215/-)	13 years	01.05.2013
5	Bodh Raj	Charkari (Year 2000) (Rs.228/-)	13 years	01.05.2013
6	Naresh Kumar	Mahog (Year 2001) (Rs.415/-)	12 years	01.06.2013
7	Dharma Singh	Sainj Bagra (Year 2001) (Rs.222/-)	12 years	30.04.2013
8	Hem Raj	Balag (Year 2000) (Rs.201/-)	13 years	30.04.2013
9	Ganga Dass	Bagshar (Year 2000) (Rs.395/-)	13 years	31.07.2013
10	Tek Chand	Barokhari (Year 2001) (Rs.360/-)	13 years	31.07.2013
11	Krishan Lal	Karsog (Year 2003) (Rs.1397/-)	10 years	31.07.2013

The workmen/petitioners were employed for sweeping work but made to work for checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDO), Karsog, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDO, Karsog have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO, Karsog for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made

any representation to the SDO Karsog either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workman Kushal Singh has submitted his affidavit in evidence as Ex.A-1 and has proved documents Ex.P-1 to P-14. He has stated that he has no appointment letter and he was appointed for Safai and later on the entire work was taken from him. He has refused the suggestion that policy dated 25.08.2000 is not applicable to him. He accepted that notice was given to him prior to termination of his service but refused the suggestion that he was paid his dues including retrenchment compensation. Sh. Bodh Raj submitted his affidavit in evidence as Ex.A-2, Sh. Hem Raj has submitted his affidavit in evidence as Ex.A-3, Sh. Dharam Singh has submitted his affidavit in evidence as Ex.A-4, Sh. Manohar Lal has submitted his affidavit in evidence as Ex.A-5, Sh. Naresh Kumar has submitted his affidavit in evidence as Ex.A-6, Sh. Bhupinder Kumar has submitted his affidavit in evidence as Ex.A-7, Sh. Jai Kumar has submitted his affidavit in evidence as Ex.A-9 and Sh. Tek Chand has submitted his affidavit in evidence as Ex.A-11 and have got examined by the management-counsel except Smt. Ganga Devi and Sh. Krishan Lal as both the workmen/claimants have not submitted their affidavits in evidence.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000(Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and

removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths. (2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:—

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***
>
> ***(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and***
>
> ***(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"***

Section 25-N of the Industrial Disputes Act, 1947 read as follow:—

> ***[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and***

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE (Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice (if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No. 3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9, 2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 14 years prior to their termination on 31.07.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> ***(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act

of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :—

> ***"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."***

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

> ***"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."***

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 49/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/54/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 576.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 49/2014) of the Central Government Industrial Tribunal-cum -Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (HP) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/54/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 49/2014

Registered On:-01.01.2015

1. Sh. Ashok Kumar, S/o Sh. Amar Chand, R/o Village Ralan, Post Office, Bahanu, Tehsil Sarkaghat, District Mandi (HP).
2. Meena Devi, W/o Sh. Inder Singh, R/o Village Durgapur, Post Office Thinagalu, Tehsil Sarkaghat, District. Mandi (HP).
3. Om Prakash, S/o Sh. Badri Dass, R/o Village Bahi, Post Office Bhambla, Tehsil Sarkaghat, District Mandi (HP).
4. Savitri Devi, W/o Sh. Tulsi Ram, R/o Village Nehad Luhakharm, Post Office Thouna, Tehsil Sarkaghat, District Mandi (HP). …Workmen

Versus

1. The Chief General Manager, BSNL, Shimla, District Shimla.
2. General Manager, BSNL Ltd. (Telephone) Mandi, District Mandi, Himachal Pradesh.

3. Sub-Divisional Engineer (SDO), BSNL Ltd. Sarkaghat,
District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/54/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

"Whether the action of the management of BSNL in terminating the services of workmen without following the procedure laid down under Section 25-F of the ID Act, 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent No. 3 (SDO) Sarkaghat and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Ashok Kumar	Baldawara (Year 2003) (Rs.500/-)	11 years	01.05.2013
2	Balbir Singh	Ropri (Year 1998) (Rs.228/-)	15 years	01.05.2013
3	Meena Devi	Durgapur (Year 1998) (Rs.300/-)	15 years	01.05.2013
4	Savitri Devi	Thouna (Year 2001) (Rs.200/-)	12 years	15.04.2013
5	Om Prakash	Bhambla (Year 2000) (Rs.433/-)	13 years	01.05.2013

The workmen/petitioners were employed for sweeping work but made to work for checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDO), Sarkaghat, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDO, Sarkaghat have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO Sarkaghat for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made any representation to the SDO Sarkaghat either for the wages or for grant of the temporary status. The

workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workman Sh. Ashok Kumar has submitted his affidavit in evidence as Ex.A-1 and has proved documents Ex.P1 to P-13. He has stated that he has no appointment letter and he was appointed for Safai and later on the entire work was taken from him. He has refused the suggestion that policy dated 25.08.2000 is not applicable to him. He accepted that notice was given to him prior to termination of his service but refused the suggestion that he was paid his dues including retrenchment compensation. Sh. Om Parkash submitted his affidavit in evidence as Ex.A-2, Smt. Savitri Devi has submitted her affidavit in evidence as Ex.A-3, Smt. Meena Devi submitted her affidavit in evidence as Ex.A-4 and have got examined by the management-counsel.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000 (Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), Civil Appeal No. 3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9, 2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No. 2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the

management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths .(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***
>
> ***(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and***
>
> ***(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"***
>
> Section 25-N of the Industrial Disputes Act, 1947 read as follow:-
>
> ***[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and***
>
> ***(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.***

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of

engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice(if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India***

and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000, in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 15 years prior to their termination on 01.05.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> ***(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> ***(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> ***"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be***

awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 50/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/57/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 577.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 50/2014) of the Central Government Industrial Tribunal-cum–Labour Court Chandigarh as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (HP). & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/57/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 50/2014

Registered On:-01.01.2015

Smt. Dhamyanti Devi, W/o Sh. Jai Kumar, R/o Village Lohakar,
Post Office Kapahi, Tehsil Sarkaghat, District. Mandi, Himachal Pradesh ...Workwoman

Versus

1. Chief General Manager, BSNL, Shimla (HP).
2. General Manager, BSNL Ltd. (Telephone) Mandi, District Mandi, Himachal Pradesh.
3. Sub-Divisional Officer, (SDO), BSNL Ltd. Bhangrotu at Ner Chowk,
   District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/57/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

> **"Whether the action of the management of BSNL in terminating the of services of workmen without following the procedure laid down under Section 25-F of the ID Act 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"**

1. The facts, in brief are that the workwoman was engaged as part time sweeper under respondent no3(SDO) Bhangrotu at Ner Chowk, District Mandi, Himachal Pradesh in the year 1998 in telephone exchange and her services were terminated on 20.04.2014. the workwoman worked to the best of her ability or sincerity and worked for whole day from the initial date of engagement despite the fact that she was engaged for 3-4 hours in a day but was made to work for checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDO), Bhangrotu at Ner-Chowak,

issued the retrenchment/termination notice to workwoman on the ground that the workwoman was engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workwoman assails the same before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workwoman has completed more than 10 years of regular part time service as sweeper and now is having legitimate expectation w.r.t. the conversion of her part time engagement to whole time status. The termination notice issued to workwoman is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The part time sweepers were engaged in over all Himachal Pradesh but only termination notices were issued in the District, Mandi only. The reason so stated in the termination letter issued to workwoman is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workwoman may kindly be quashed and set-aside and the workwoman may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workwoman was engaged orally on need basis for the part time work of sweeping only by the respective sub-division officers directly w.e.f. the dates and exchanges as mentioned below:-

Sr. No.	Name	Tel. Exchange	Existing Time allowed	Wages being paid in Rs.	Date of engagement	Date of retrenchment
1	Smt Damyanti Devi	Lohakahr	25 Min.	200	01.04.2010	20.04.2013

sweeper under SDO Bhangrotu at Ner-Chowak for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the workwoman had been working for whole of the day much less even 3-4 hours a day. The workwoman/claimant is not assigned any other job and she is free to do any work during the rest of the day. It is also denied that that the workwoman/claimant is made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workwoman/claimant had not made any representation to the SDO Bhangrotu at Ner-Chowak either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workwoman/claimant be dismissed and the reference may be answered in negative.

3. Workwomen Smt. Dhamyanti Devi has submitted her affidavit in evidence as Ex.A-1 and has proved documents Ex.P1 to P-13. She has stated that she has no appointment letter and she was appointed for Safai and later on the entire work was taken from her. She has refused the suggestion that policy dated 25.08.2000 is not applicable to her. She accepted that notice was given to her prior to termination of her service but refused the suggestion that she was paid her dues including retrenchment compensation.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workwoman/claimant. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workwoman that workwoman did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact

strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workwoman/claimant and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workwoman contended that though workwoman was engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but was made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000(Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workwoman was terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workwoman while she was retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workwoman is entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workwoman was engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workwoman was engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workwoman was terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workwoman was engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workwoman was retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workwoman but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workwoman was retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths.(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of

the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workwoman along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workwoman for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workwoman argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workwoman as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workwoman was retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workwoman has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has admitted that workwoman did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice(if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-

witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimant/workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimant/workwoman is working as part time Sweeper in the managements/respondents for the last 16years prior to her termination on 20.04.2014. There is no legal show cause notice or charge-sheet issued to the claimant/workwoman by the respondent/management. Moreover, the job of the claimant/workwoman to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimant/workwoman has not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

> ***"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."***

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***
>
> ***Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."***

19. Having regard to the legal position as discussed above and the facts that the workwoman herein was performing duties of regular and perennial nature, this Tribunal is of the firm view that the workwoman have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that she has neither pleaded nor testified that she is totally unemployed since her termination/retrenchment. Hence, she is entitled for reinstatement into service on the same post from the date of her termination/retrenchment with 50% back wages, inasmuch as termination of the workwoman is per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 51/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/51/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 578.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 51/2014) of the Central Government Industrial Tribunal-cum-Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (H.P) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/51/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 51/2014

Registered On:-01.01.2015

1. Govind Ram, S/o Sh. Roop Chand, R/o Village & PO Moviseri, Tehsil Chachiot, District. Mandi (HP).
2. Dole Ram, S/o Sh. Chaman Lal, R/o Village Gunas, PO Shikwari, Tehsil Thunag, District. Mandi (HP).
3. Megh Singh, S/o Sh. Khem Singh, R/o Village Khumara, PO Bagsaid, Tehsil Thunag, District Mandi (HP). ...Workmen

Versus

1. Chief General Manager, BSNL Ltd. Shimla, District Shimla, Himachal Pradesh.
2. General Manager, BSNL Ltd. Mandi, District Mandi, Himachal Pradesh).
3. Sub-Divisional Engineer (SDE), Gohar, District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/51/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

> **"Whether the action of the management of BSNL in terminating the of services of workmen without following the procedure laid down under Section 25-F of the ID Act, 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"**

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent No 3 (SDE) Gohar and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Govind Ram	Moviseri (Year 2007) Rs.139/-)	6 years	24.05.2013
2	Dole Ram	Shikawari (Year 2000) (Rs.139/-)	13 years	24.05.2013
3	Megh Singh	Bagsaid (Year 2000) (Rs.737/-)	13 years	24.05.2013

The workmen/petitioners were employed for sweeping work but made to work w.r.t. checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The

Sub-Divisional Officer (SDE), Gohar, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDE, Gohar have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO Gohar for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made any representation to the SDO Gohar either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workman Govind Ram has submitted his affidavit in evidence as Ex.A-1 and has proved documents Ex.P-1 along with Mark-A to Mark-E. He has stated that he has no appointment letter and he was appointed for Safai and later on the entire work was taken from him. He has refused the suggestion that policy dated 25.08.2000 is not applicable to him. He accepted that notice was given to him prior to termination of his service but refused the suggestion that he was paid his dues including retrenchment compensation. Workmen Dole Ram and Megh Singh has not examined themselves as they have not submitted their affidavits in evidence.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the

retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000(Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths.(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice(if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the

management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 13 years prior to their termination on 24.05.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and***

was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 48/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/55/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 579.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/2014) of the Central Government Industrial Tribunal-cum -Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (H.P) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/55/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 48/2014

Registered On:-01.01.2015

1. Smt. Yudhistra Kumari, W/o Sh. Hari Ram, R/o Village Sai, PO-Jugahan, Tehsil Sundernagar, District. Mandi (HP).
2. Smt. Himavati, W/o Sh. Durga Dass, R/o Village & PO Dehar, Tehsil Sundernagar, District. Mandi (HP).
3. Sh. Roop Lal, S/o Sh. Hari Singh, R/o Village Nawani, Post Office Trifalghat, Tehsil Sundernagar, District-Mandi, Himachal Pradesh.
4. Sh. Hari Ram, S/o Sh. Chura Ram, R/o Village Sai, Post Office Jugahan, Tehsil Sundernagar, District Mandi (HP). ...Workmen

Versus

1. Chief General Manager, BSNL, Shimla, District Shimla, Himachal Pradesh.
2. General Manager, BSNL Ltd. (Telephone) Mandi, District Mandi, Himachal Pradesh.
3. Sub-Divisional Engineer (SDE), Sundernagar, District Mandi, Himachal Pradesh. ...Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/55/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

"Whether the action of the management of BSNL in terminating the of services of workmen without following the procedure laid down under Section 25-F of the ID Act, 1947 and not complying to letter dated 25.08.2000 is legal justified? If not what relief the workman is entitled to and from which date?"

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent no3(SDE) Sundernagar and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Yudhistra Kumari	Dinak (Year 1999) (Rs.1066/-)	14 years	Orally terminated on 28.3.2013
2	Smt. Himavati	Dehar (Year 2003) (Rs.450/-)	11 years	28.3.2013
3	Roop Lal	Taleli(Year 2003) (Rs.345/-)	11 years	28.3.2013
4	Hari Ram	Jarol (Year 1998) (Rs.1300/-)	15 years	28.3.2013

The workmen/petitioners were employed for sweeping work but made to work w.r.t. checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDE), Sundernagar, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked.

The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDE, Sundernagar have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO Mandi for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made any representation to the SDO Mandi either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workwomen Smt. Yuddishtra Devi has submitted her affidavit in evidence as Ex.A-1 and has proved documents Ex.P-1 to P-13. She has stated that she has no appointment letter and she was appointed for Safai and later on the entire work was taken from her. She has refused the suggestion that policy dated 25.08.2000 is not applicable to her. She accepted that notice was given to her prior to termination of her service but refused the suggestion that she was paid her dues including retrenchment compensation. Smt. Himawati submitted her affidavit in evidence as Ex.A-2, Sh. Roop Lal has submitted his affidavit in evidence as Ex.A-3 and Sh. Hari Ram submitted his affidavit in evidence as Ex.A-4 and have got examined by the management-counsel.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000(Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section

25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths.(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice (if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No. 3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can

only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9, 2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 12 years prior to their termination on 28.03.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a***

positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the

action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***
>
> ***Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."***

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 580.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, मंडी (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 332/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/96/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 580.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 332/2013) of the Central Government Industrial Tribunal-cum-Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL, Mandi (HP) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/96/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 332/2013

Registered On 24.02.2014

Smt. Geeta Devi, W/o Sh. Lalu Ram, Village & PO-Kotli,
Teh.-Sadar, Distt. Mandi (HP). ...Workwoman

Versus

General Manager, Telephone Distt, BSNL, Mandi (HP).

The Sub-Divisional Officer (T), BSNL, Mandi, Distt. Mandi (HP.) ...Management

AWARD

Passed on:- 09.06.2020

Central Government vide Notification No. L-40012/96/2013-IR(DU) Dated 06.02.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

"Whether action of termination of service of Smt. Geeta Devi W/o Lalu Ram w.e.f. 24.06.2013 by the management of General Manager, Bharat Sanchar Nigam Ltd., Telecom, Mandi (HP) is legal, just and valid? If not, to what relief the workman is entitled to and from which date?"

1. Brief facts, mentioned in the case, are that the workwoman was working as part time Sweeper w.e.f. 12.06.2002 till 24.06.2013 without any complaint against the work and conduct of the workwoman during the entire period of service. Her services were terminated by the management without giving notice or retrenchment compensation in gross violation of Section 25-F of the I.D. Act, 1947 which is illegal, void and bad in law. It is also pleaded that the workwoman had completed more than 240 days of service at the time of her termination from service. The work, on which, the workwoman was working, was of a regular nature. The General Manager Telecommunication, Distt. B.S.N.L. Mandi (HP) had itself issued a letter No. GMTD/E-2J8/P1/CL/34 dated 16.05.2012 to all the concerned official, in which, it is stated that the part time Safai Karamchari, who are willing to be converted into full time against the regular post of R.M.S. be taken the option from them. The workwoman is facing unemployment although trying best for employment. It is therefore, prayed that the termination of the workwoman is illegal, void and bad in law and the workwoman as entitled to reinstatement in service with all attendant benefits including back wages.

2. Management has filed its written statement, alleging therein that the workwoman was engaged orally for part time work of sweeping w.e.f. June 2002 at Telephone Exchange Kothi. The sweeping job was being done once in a day on availability of line staff in exchange and no other work was assigned to her in a day except the sweeping job as stated above and the workwoman was not engaged against any sanctioned post of BSNL or by adopting the procedure of recruitment rules and it was dependent upon the availability of work. The workwoman was dis-engaged due to the policy of the Government and moreover, there was no requirement of the workwoman as notice under Section 25-F(b) of the ID Act, 1947 was served on her vide No.MNDT/PTS/2012-13/51 dated 30.03.2013 (copy attached as Annexure M-1) along with full compensation which was received by the workwoman without any protest (copy attached as Annexure M-2). The workwoman had not put in 240 days in the preceding calendar year of service from the date of her termination. The workwoman has not placed on record the letter dated 26.05.2012 as such, no rebuttal reply can be offered by the respondent and the respondents reserve to file additional reply if the copy of the said letter is supplied to the management. It is therefore, respectfully prayed that the claim petition of the workwoman be dismissed with costs and also the reference may be answered in negative.

3. Workwoman Smt. Geeta Devi has submitted her affidavit in evidence as Ex.A-1 and has stated that she has no appointment letter and she was paid after few months of her termination from service and after that notice was given to her regarding her termination from service. She has refused the suggestion that her statement of claim is different from that of demand notice and affidavit is different from statement of claim. She also refused the suggestion that the department give her valid notice and retrenchment notice for termination of her services.

4. Management has submitted affidavit of Vikram Jeet Singh A.G.M Legal and Administration, who filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1/1 and MW1/2 in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workwoman. This witness has stated that he has sent copy of the notice Ex.MW1/1 to his higher authority but he has not sent to Government of India. He further stated that notice is given to the workwoman by hand but there is no proof of its receiving in his record. He has stated that copy of notice is not sent to the Govt. because management is a company.

5. I have heard Sh. R.K. Parmar, AR for the workwoman and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workwoman contended that though workwoman was engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but was made to work for a whole day as per the direction of the officers-authority. Learned counsel argued that instead of taking action against the arraying officials of the department, workwoman was terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workwoman while she was retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workwoman is entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana), Civil Appeal No. 3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No. 2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workwoman was engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workwoman was engaged for the entire day and she was free to do her other routine jobs in a day. Learned counsel further argued that because of the insufficient work in the exchange, workwoman was terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that claimant/workman has received compensation without any objection as such, it cannot be argued that respondent/management have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workwoman was engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, she is not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workwoman for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workwoman was retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workwoman but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really the workwoman was retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workwoman is the same as she is dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths. (2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between

the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondent/management is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that the Sub-Divisional Engineer, Telecom Mandi has issued one month notice dated 24.5.2014 to workwoman for retrenchment along with compensation dated 12.06.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.06.2013. It is further mentioned that the concerned-workwoman have to collect the compensation to which she is entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per letter dated 25.08.2000, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workwoman argued that the respondent/management violating the condition of letter dated 25.08.2000 engaged workwoman as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workwoman was retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workwoman has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has stated that notice is given to the workwoman by hand but there is no proof of its receiving in his records. According to this witness, notice is not sent to the appropriate government because management is Company. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s. Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No. 3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workwoman where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workwoman. Furthermore, before issuing a

notice to the workwoman under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workwoman. As per the Hon'ble Supreme Court, any retrenchment of the workwoman can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No . 1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondent/management argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to workwoman and she has accepted it. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workwoman argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estoppel of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the workwoman is working as part time Sweeper in the managements/respondents for the last 10 to 11 years prior to her termination on 24.06.2013. There is no legal show cause notice or charge-sheet issued to the workwoman by the respondent/management. Moreover, the job of the workwoman to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. It is pertinent to mention that workwoman has not pleaded and testified that she is totally unemployed since her termination/retrenchment.

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a***

positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the

action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***
>
> ***Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."***

19. Having regard to the legal position as discussed above and the facts that the workwoman was performing duties of regular and perennial nature, this Tribunal is of the firm view that the workwoman have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that has neither pleaded nor testified that she is totally unemployed from the date of her termination/retrenchment. Hence, she is entitled for reinstatement into service on the same post from the date of her termination/retrenchment with 50% back wages, inasmuch as termination of the workwoman is per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 581.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, मंडी (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 335/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/94/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 581.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 335/2013) of the Central Government Industrial Tribunal-cum-Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL, Mandi (HP) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/94/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 335/2013

Registered On:-24.02.2014

Smt. Leela Devi W/o Dhani Ram, Vill.-Ropa, PO-Rahia,
SubTeh.-Aut, Distt. Mandi (HP). ...Workwoman

Versus

General Manager, Telephone Distt, BSNL, Mandi (HP).

The Sub-Divisional Officer(T), BSNL, Mandi, Distt. Mandi (HP.) ...Management

AWARD

Passed on:- 09.06.2020

Central Government vide Notification No. L-40012/94/2013-IR(DU) Dated 06.02.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

"Whether action of termination of service of Smt. Leela Devi W/o Dhani Ram w.e.f. 01.05.2013 by the management of General Manager, Bharat Sanchar Nigam Ltd., Telecom, Mandi (HP) is legal, just and valid? If not, to what relief the workman is entitled to and from which date?"

1. Brief facts, mentioned in the case, are that the workwoman was working as part time Sweeper w.e.f. 01.02.2001 till 30.04.2013 without any complaint against the work and conduct of the workwoman during the entire period of service. Her services were terminated by the management without giving notice or retrenchment compensation in gross violation of Section 25-F of the I.D. Act, 1947 which is illegal, void and bad in law. It is also pleaded that the workwoman had completed more than 240 days of service at the time of her termination from service. The work, on which, the workwoman was working, was of a regular nature. The General Manager Telecommunication, Distt. B.S.N.L. Mandi(HP) had itself issued a letter No.GMTD/E-2J8/P1/CL/34 dated 16.05.2012 to all the concerned official, in which, it is stated that the part time Safai Karamchari, who are willing to be converted into full time against the regular post of R.M.S. be taken the option from them. The workwoman is facing unemployment although trying best for employment. It is therefore, prayed that the termination of the workwoman is illegal, void and bad in law and the workwoman as entitled to reinstatement in service with all attendant benefits including back wages.

2. Management has filed its written statement, alleging therein that the workwoman was engaged orally for part time work of sweeping w.e.f. June 2002 at Telephone Exchange Kothi. The sweeping job was being done once in a day on availability of line staff in exchange and no other work was assigned to her in a day except the sweeping job as stated above and the workwoman was not engaged against any sanctioned post of BSNL or by adopting the procedure of recruitment rules and it was dependent upon the availability of work. The workwoman was dis-engaged due to the policy of the Government and moreover, there was no requirement of the workwoman as notice under Section 25-F(b) of the ID Act, 1947 was served on her vide No. MNDT/PTS/2012-13/51 dated 30.03.2013(copy attached as Annexure M-1) along with full compensation which was received by the workwoman without any protest (copy attached as Annexure M-2). The workwoman had not put in 240 days in the preceding calendar year of service from the date of her termination. The workwoman has not placed on record the letter dated 26.05.2012 as such, no rebuttal reply can be offered by the respondent and the respondents reserve to file additional reply if the copy of the said letter is supplied to the management. It is therefore, respectfully prayed that the claim petition of the workwoman be dismissed with costs and also the reference may be answered in negative.

3. Workwoman Smt. Leela Devi has submitted her affidavit in evidence as Ex.A-1 and has stated that she has no appointment letter and she was paid after few months of her termination from service and after that notice was given to her regarding her termination from service. She has refused the suggestion that her statement of claim is different from that of demand notice and affidavit is different from statement of claim. She also refused the suggestion that the department give her valid notice and retrenchment notice for termination of her services.

4. Management has submitted affidavit of Vikram Jeet Singh A.G.M Legal and Administration, who filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1/1 and MW1/2 in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workwoman. This witness has stated that he has sent copy of the notice Ex.MW1/1 to his higher authority but he has not sent to Government of India. He further stated that notice is given to the workwoman by hand but there is no proof of its receiving in his record. He has stated that copy of notice is not sent to the Govt. because management is a company.

5. I have heard Sh. R.K. Parmar, AR for the workwoman and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workwoman contended that though workwoman was engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but was made to work for a whole day as per the direction of the officers-authority. Learned counsel argued that instead of taking action against the arraying officials of the department, workwoman was terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workwoman while she was retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workwoman is entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workwoman was engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workwoman was engaged for the entire day and she was free to do her other routine jobs in a day. Learned counsel further argued that because of the insufficient work in the exchange, workwoman was terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that claimant/workman has received compensation without any objection as such, it cannot be argued that respondent/management have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workwoman was engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, she is not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workwoman for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workwoman was retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workwoman but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really the workwoman was retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workwoman is the same as she is dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths.(2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between

the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondent/management is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]".

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that the Sub-Divisional Engineer, Telecom Mandi has issued one month notice dated 24.5.2014 to workwoman for retrenchment along with compensation dated 12.06.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.06.2013. It is further mentioned that the concerned-workwoman have to collect the compensation to which she is entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per letter dated 25.08.2000, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workwoman argued that the respondent/management violating the condition of letter dated 25.08.2000 engaged workwoman as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workwoman was retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workwoman has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has stated that notice is given to the workwoman by hand but there is no proof of its receiving in his records. According to this witness, notice is not sent to the appropriate government because management is Company. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No.3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workwoman where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workwoman. Furthermore, before issuing a

notice to the workwoman under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workwoman. As per the Hon'ble Supreme Court, any retrenchment of the workwoman can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No.6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No.1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondent/management argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to workwoman and she has accepted it. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workwoman argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estoppel of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the workwoman is working as part time Sweeper in the managements/respondents for the last 10 to 11 years prior to her termination on 24.06.2013. There is no legal show cause notice or charge-sheet issued to the workwoman by the respondent/management. Moreover, the job of the workwoman to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. It is pertinent to mention that workwoman has not pleaded and testified that she is totally unemployed since her termination/retrenchment.

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a***

positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the

action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***
>
> ***Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."***

19. Having regard to the legal position as discussed above and the facts that the workwoman was performing duties of regular and perennial nature, this Tribunal is of the firm view that the workwoman have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that has neither pleaded nor testified that she is totally unemployed from the date of her termination/retrenchment. Hence, she is entitled for reinstatement into service on the same post from the date of her termination/retrenchment with 50% back wages, inasmuch as termination of the workwoman is per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 582.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स महाप्रबंधक, बीएसएनएल, मंडी (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 337/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुआ था।

[सं. एल-40012/95/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 582.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 337/2013) of the Central Government Industrial Tribunal-cum-Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The General Manager, BSNL, Mandi (HP) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/95/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 337/2013

Registered On:-24.02.2014

Smt. Nirmla Devi W/o Sh. Tilak Raj, Village-Kythwari,
PO-Tikkar, Tehsil Sadar, Distt.Mandi (HP). ...Workwoman

Versus

General Manager, Telephone Distt, BSNL, Mandi (HP).

The Sub-Divisional Officer(T), BSNL, Mandi, Distt. Mandi (HP.) ...Management

AWARD

Passed on:- 09.06.2020

Central Government vide Notification No. L-40012/95/2013-IR(DU) Dated 06.02.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

> **"Whether action of termination of service of Smt. Nirmla Devi W/o Tilak Raj w.e.f. 01.05.2013 by the management of General Manager, Bharat Sanchar Nigam Ltd., Telecom, Mandi (HP) is legal, just and valid? If not, to what relief the workman is entitled to and from which date?"**

1. Brief facts, mentioned in the case, are that the workwoman was working as part time Sweeper w.e.f. 01.01.2010 till 30.04.2013 without any complaint against the work and conduct of the workwoman during the entire period of service. Her services were terminated by the management without giving notice or retrenchment compensation in gross violation of Section 25-F of the I.D. Act, 1947 which is illegal, void and bad in law. It is also pleaded that the workwoman had completed more than 240 days of service at the time of her termination from service. The work, on which, the workwoman was working, was of a regular nature. The General Manager Telecommunication, Distt. B.S.N.L. Mandi(HP) had itself issued a letter No.GMTD/ E-2J8/P1/CL/34 dated 16.05.2012 to all the concerned official, in which, it is stated that the part time Safai Karamchari, who are willing to be converted into full time against the regular post of R.M.S. be taken the option from them. The workwoman is facing unemployment although trying best for employment. It is therefore, prayed that the termination of the workwoman is illegal, void and bad in law and the workwoman as entitled to reinstatement in service with all attendant benefits including back wages.

2. Management has filed its written statement, alleging therein that the workwoman was engaged orally for part time work of sweeping w.e.f. June 2002 at Telephone Exchange Kothi. The sweeping job was being done once in a day on availability of line staff in exchange and no other work was assigned to her in a day except the sweeping job as stated above and the workwoman was not engaged against any sanctioned post of BSNL or by adopting the procedure of recruitment rules and it was dependent upon the availability of work. The workwoman was dis-engaged due to the policy of the Government and moreover, there was no requirement of the workwoman as notice under Section 25-F(b) of the ID Act, 1947 was served on her vide No.MNDT/PTS/2012-13/51 dated 30.03.2013(copy attached as Annexure M-1) along with full compensation which was received by the workwoman without any protest(copy attached as Annexure M-2). The workwoman had not put in 240 days in the preceding calendar year of service from the date of her termination. The workwoman has not placed on record the letter dated 26.05.2012 as such, no rebuttal reply can be offered by the respondent and the respondents reserve to file additional reply if the copy of the said letter is supplied to the management. It is therefore, respectfully prayed that the claim petition of the workwoman be dismissed with costs and also the reference may be answered in negative.

3. Workwoman Smt. Nirmla Devi has submitted her affidavit in evidence as Ex.A-1 and has stated that she has no appointment letter and she was paid after few months of her termination from service and after that notice was given to her regarding her termination from service. She has refused the suggestion that her statement of claim is different from that of demand notice and affidavit is different from statement of claim. She also refused the suggestion that the department give her valid notice and retrenchment notice for termination of her services.

4. Management has submitted affidavit of Vikram Jeet Singh A.G.M Legal and Administration, who filed his affidavit in evidence as Ex.MW1/A along with documents Ex.MW1/1 and MW1/2 in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workwoman. This witness has stated that he has sent copy of the notice Ex.MW1/1 to his higher authority but he has not sent to Government of India. He further stated that notice is given to the workwoman by hand but there is no proof of its receiving in his record. He has stated that copy of notice is not sent to the Govt. because management is a company.

5. I have heard Sh. R.K. Parmar, AR for the workwoman and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workwoman contended that though workwoman was engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but was made to work for a whole day as per the direction of the officers-authority. Learned counsel argued that instead of taking action against the arraying officials of the department, workwoman was terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workwoman while she was retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workwoman is entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat(Haryana), Civil Appeal o.3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9,2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court*** and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No.2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workwoman was engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workwoman was engaged for the entire day and she was free to do her other routine jobs in a day. Learned counsel further argued that because of the insufficient work in the exchange, workwoman was terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that claimant/workman has received compensation without any objection as such, it cannot be argued that respondent/management have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workwoman was engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, she is not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workwoman for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workwoman was retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workwoman but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really the workwoman was retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workwoman is the same as she is dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths. (2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between

the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondent/management is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that the Sub-Divisional Engineer, Telecom Mandi has issued one month notice dated 24.5.2014 to workwoman for retrenchment along with compensation dated 12.06.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.06.2013. It is further mentioned that the concerned-workwoman have to collect the compensation to which she is entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per letter dated 25.08.2000, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workwoman argued that the respondent/management violating the condition of letter dated 25.08.2000 engaged workwoman as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workwoman was retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workwoman has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE(Admn.) in which he has stated that notice is given to the workwoman by hand but there is no proof of its receiving in his records. According to this witness, notice is not sent to the appropriate government because management is Company. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No. 3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workwoman where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workwoman. Furthermore, before issuing a

notice to the workwoman under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workwoman. As per the Hon'ble Supreme Court, any retrenchment of the workwoman can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9,2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondent/management argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to workwoman and she has accepted it. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workwoman argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estoppel of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the workwoman is entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the workwoman is working as part time Sweeper in the managements/respondents for the last 10 to 11 years prior to her termination on 24.06.2013. There is no legal show cause notice or charge-sheet issued to the workwoman by the respondent/management. Moreover, the job of the workwoman to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. It is pertinent to mention that workwoman has not pleaded and testified that she is totally unemployed since her termination/retrenchment.

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are:

(i) ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***

(ii) ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a***

positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25-F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee./workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/ workman his dues in the form of full back wages."

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the

action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.***
>
> ***Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."***

19. Having regard to the legal position as discussed above and the facts that the workwoman was performing duties of regular and perennial nature, this Tribunal is of the firm view that the workwoman have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that has neither pleaded nor testified that she is totally unemployed from the date of her termination/retrenchment. Hence, she is entitled for reinstatement into service on the same post from the date of her termination/retrenchment with 50% back wages, inasmuch as termination of the workwoman is per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 583.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य महाप्रबंधक, बीएसएनएल, शिमला, (एचपी) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ सं. 52/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-40012/53/2014-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 583.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 52/2014) of the Central Government Industrial Tribunal-cum -Labour Court as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief General Manager, BSNL, Shimla, (H.P) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-40012/53/2014-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sh. A.K. Singh, Presiding Officer

ID No. 52/2014

Registered on:-01.01.2015

1. Smt. Girja Devi, W/o Sh. Hem Singh, R/o VPO Shivabadar Thachi, Tehsil Sadar, District. Mandi (HP).
2. Chudi Devi W/o Sh. Ghanshyam Singh, R/o Village Khalao, PO Balichowki, Sub-Tehsil, Balichowki, Distt. Mandi, Himachal Pradesh. ...Workmen

Versus

1. Chief General Manager, BSNL, Shimla (HP).
2. General Manager, BSNL Ltd. (Telephone) Mandi, District Mandi, Himachal Pradesh.
3. Sub-Divisional Officer (SDO), BSNL Ltd. Pandoh, District Mandi, Himachal Pradesh. ... Respondents/Managements

AWARD

Passed on:-09.06.2020

Central Government vide Notification No. L-40012/53/2014-IR(DU) Dated 24.11.2014, under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (hereinafter called the Act), has referred the following Industrial dispute related to the Department of Bharat Sanchar Nigam Ltd. for adjudication to this Tribunal:-

> **"Whether the action of the management of BSNL in terminating the services of workmen without following the procedure laid down under Section 25-F of the ID Act 1947 and not complying to letter dated 25.08.2000 is legal and justified? If not what relief the workman is entitled to and from which date?"**

1. The facts, in brief are that the workmen/petitioners were engaged as part time sweeper under respondent No. 3 (SDO) Pandoh and the details of engagement of the workmen/petitioners are mentioned as under:-

Sr. No.	Name	Name of Telephone Exchange Date of Engagement & Remuneration	Length of services	Date of termination
1	Girja Devi	Shiva Badar (Year 2000) (Rs.450/-)	13 years	04.09.2013
2	Chudi Devi	Bali Chowki (Year 1999) (Rs.450/-)	13 years	04.09.2013

The workmen/petitioners were employed for sweeping work but made to work w.r.t. checking the line, receiving complaints from general public and removing the same and giving the telephone connection to the people of the respective area and maintained the line for the purpose of giving better service to the public. The Sub-Divisional Officer(SDO), Pandoh, issued the retrenchment/termination notice to workmen/petitioners on the ground that the workmen/petitioners were engaged in contravention of letter dated 25.08.2000. Feeling aggrieved and dissatisfied with the omission and commission of the establishment, the workmen/petitioners agitated the matter before this Tribunal. The strength of employees/workmen of the establishment is more than 270 and in case of retrenchment the Chapter V-A of the Industrial Disputes Act, 1947 is likely to be invoked. The notices as mentioned, is against the policy framed by the BSNL which is in existence till date as per information supplied under the right to information Act by the respondents in which, it is specifically mentioned that the workmen/employees can only be retrenched on the ground of non-availability of work and funds or in case workmen can quit the service by giving one months notice. The workmen/petitioners have completed more than 10 years of regular part time service as sweeper and now were having legitimate expectation w.r.t. the conversion of their part time engagement to whole time status. However, acting contrary, the SDO, Pandoh have issued a termination notice to applicants/claimants which is contrary to the provision of Section 25-F of the Industrial Disputes Act, 1947. The reason so stated in the termination letter issued to workmen/petitioners is

factually incorrect and the letter dated 25.08.2000 is a letter for regularization/grant of whole time status policy/order and it is not a ban imposed by the department. It is therefore, prayed that the retrenchment/termination of the workmen/petitioners are required to be quashed and set-aside and the workmen/petitioners may kindly be ordered to be re-engaged in service along with all consequential benefits.

2. Management has filed its written statement and denied the contents of claim petition by stating that there is no such scheme known as grant of temporary status and regularization 1989 for the grant of temporary status to part time worker is/was in force in BSNL as the scheme framed in 1989 by the Department of Telecommunication was one time scheme for those casual workers who were working at that time. The workmen/claimants were engaged as part time sweeper under SDO Pandoh for doing the job for less than one hour in a day on the negotiated amount and also on need basis without following the process of recruitment. It is specifically denied that the claimants had been working for whole of the day much less even 3-4 hours a day. The workmen/claimants were not assigned any other job and they were free to do any work during the rest of the day. It is also denied that that the workmen/claimants were made to work for checking the line, receiving complaints from general public and removing the defects etc. as alleged. The workmen/claimants had not made any representation to the SDO Pandoh either for the wages or for grant of the temporary status. The workmen/claimants were regularly paid their wages and no representation was received from the claimants during the period of their engagement as alleged and the management has not committed any omission or commission or acted in violation of the provisions of the Act. It is therefore, respectfully prayed that the claim petition of the workmen/claimants be dismissed and the reference may be answered in negative.

3. Workwomen Smt. Girja Devi has submitted her affidavit in evidence as Ex.A-1 and has proved documents Ex.P1 to P-14. She has stated that she has no appointment letter and she was appointed for Safai and later on the entire work was taken from her. She has refused the suggestion that policy dated 25.08.2000 is not applicable to her. She accepted that notice was given to her prior to termination of her service but refused the suggestion that she was paid her dues including retrenchment compensation. Smt. Chudi Devi submitted her affidavit in evidence as Ex.A-2 and also has got examined by the management-counsel.

4. Management has submitted affidavit of Vikram Jeet, DE(Admn.), in evidence as Ex.MW1/A in the line of the facts alleged in the written statement and cross-examined by the learned AR of the workmen/claimants. This witness has stated that he was posted at Mandi from 16.04.2016 as AGM. He further stated that he have knowledge about the termination of the workmen and notices sent to the respective workers. He has stated that he was not posted at that time when retrenchment compensation was given to the respective workmen. He accepted the suggestion made by the learned counsel of the workmen that workmen did not receive retrenchment compensation which is still lying with the management except Kishan Lal, who had received his compensation. He has accepted that no disciplinary action has been taken with respect to the official in the light of letter Ex.P-2 Clause 7 and also accepted that instead of taking action against the officials of the management workers were retrenched from their services. He is unable to tell the exact strength of the workmen for the work in the year 2011-2012. He has accepted that there is no copy of notice sent to the appropriate government in the file. He is unable to tell whether ban was imposed for engagement of part time employees in the year 1984-1985 in the department.

5. I have heard Sh. Devender Sharma, Ld. Counsel for the workmen/claimants and Sh. Anish Babbar, Ld. Counsel for the management and have carefully gone through the evidence led by both the parties and given thoughtful consideration raised by the learned counsels during the course of arguments.

6. Learned counsel of the workmen contended that though workmen were engaged as part time Sweeper for 3-4 hours in a day in the Telephone Exchange but were made to work for a whole day as per the direction of the officers-authority as is mentioned in Para 5 of the claim petition. Learned counsel further contended that the retrenchment/termination of the workmen were effected in contravention of letter dated 25.08.2000 (Ex.P-2) by which direction is made to take action against those officials of the department who were responsible for engaging part time employees in the establishment. Learned counsel argued that instead of taking action against the arraying officials of the department, workmen were terminated without following the provisions of Section 25-F and 25-N of the Industrial Disputes Act. Learned counsel further contended that though reference is made for illegal termination of the workmen while they were retrenched by the respondents, giving one month notice and alleged compensation. No compliance has to be done for the retrenchment vide Section 25-N of the Industrial Disputes Act, where three month notice in writing is required, indicating the reasons for retrenchment. Furthermore, prior permission from the appropriate-government for such as the case may be prescribed by the Government has been made on its behalf. Learned counsel further argued that even in case of compliance of Section 25-F(C) has not been made, which is mandatory in nature as such, the alleged retrenchment/termination is illegal and workmen are entitled for re-engagement along with all back wages and consequential relief. Learned counsel has placed reliance of the cases of ***Anoop Sharma Vs. Executive***

Engineer, Public Health Division No. 1 Panipat(Haryana), Civil Appeal No. 3478 of 2010, decided on April 9, 2010, Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9, 2014, Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016, Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No.2280 of 2000, decided on March 29, 2000 decided by the Hon'ble Supreme Court and judgment of Hon'ble Punjab & Haryana High Court in ***State of Haryana Vs. Sultan Sing & Others, CPW No. 2370/2013, decided on 17.11.2014.***

7. Contrary to this, management counsel argued that workmen were engaged for 30-40 minutes per day for sweeping work in the exchange and there is nothing on record to prove that the workmen were engaged for the entire day and they performed checking of the line, receiving of the complaints from general public and removing the same and giving telephone connection as is alleged in the claim petition. Learned counsel further argued that because of the insufficient work in the exchange, workmen were terminated/retrenched from the service after giving one month notice and remuneration arising thereof. Learned counsel further argued that few workmen while received compensation few denied it as such, it cannot be argued that respondents/managements have not complied the provisions of Section 25-F of the Industrial Disputes Act which is mandatory in nature. Learned counsel further argued that there is no such scheme existing in the management for regularization of such an employee, who are part time worker. Learned counsel further argued that workmen were engaged orally without any advertisement, examination or interview for sweeping purpose and there was no substantive vacancy in the department as such, they are not entitled either for re-engagement or for regularization in the department.

8. Before averting to the legal controversy between the parties in the light of the reference, it will be desirable to mention those facts which are admitted between the parties. The engagement of workmen for sweeping purpose in exchange, dates and years of engagement, issuing of notices and compensation thereof in view of the provisions of Section 25-F of the Industrial Disputes act are almost admitted between the parties. The question which remains for consideration with respect to the real compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 and circumstances under which workmen were retrenched/terminated from service by the management. It is also not disputed that the reference is made for deciding termination of the services of the workmen but the notice sent in compliance of Section 25-F of the Industrial Disputes Act reveals that really these workmen were retrenched from the service as is alleged in the notice itself. It is pertinent to mention that due to defective reference by the competent authority, the power of the Tribunal does not come to an end because the real controversy, if it is incidental, can be looked upon by the Tribunal. No doubt there is a difference between the termination and retrenchment and the provisions of notices are incorporated differently in Section 25-F and 25-N of the Industrial Disputes Act but the ultimate dispute of workmen are the same as they are dis-engaged from the service, which was means of livelihood of his own as well as of his family. The Hon'ble Supreme Court in catena of cases including ***Tata Iron and Steel Company Ltd. Vs. State of Jharkhand and Oths. (2014) 1 Supreme Court Cases 536,*** has held that the bounded duty of the Government to make the reference should be appropriately reflective of the exact nature of dispute between the parties. As per the Hon'ble Supreme Court though, the jurisdiction of the Labour Court/Industrial Tribunal is confined to the terms of the reference but at the same time, it is empower to go incidental issues also. In the light of the judgment of the Hon'ble Apex Court, this Tribunal is of the considered opinion that this Tribunal has power to deal with the retrenchment of the workmen along with reference regarding the termination of the employees as well.

9. Thus, it is relevant to see whether action of respondents/managements is in compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes act, 1947 read as under:-

> ***"25-F. Conditions precedent to retrenchment of workmen-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-***
>
> ***(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;***
>
> ***(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and***
>
> ***(c) Notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]"***

Section 25-N of the Industrial Disputes Act, 1947 read as follow:-

[25N. Conditions precedent to retrenchment of workmen-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

10. The question which arises for consideration is as to whether the provision of retrenchment or termination is complied in letter and spirit. Perusal of the file and documents filed by the respective parties, it is clear that Divisional Engineer Administration, Bharat Sanchar Nigam Ltd., Mandi, has issued a letter Ex.P-13, stating that all PTS workers, who have been engaged after ban imposed vide letter dated 05.08.2000 for sweeping work, be retrenched in phased manner in chronological order starting from the last date of engagement as is mentioned in the letter. The Sub-Divisional Engineer, Telecom issued one month notice to workmen for retrenchment along with compensation dated 24.05.2013, stating the facts that in pursuance of the letter dated 25.08.2000 you are hereby given this notice for one month and your services will be retrenched from 24.08.2013. It is further mentioned that the concerned-workmen have to collect the compensation to which they are entitled under the provisions of Section 25-F of the Industrial Disputes Act, 1947 from the concerned Sub-Divisional Engineer. As per the Condition VIII of the letter dated 25.08.2000 Ex.P-2, it is clear that it stipulates that no part time casual labours will be engaged thereafter and any violation will result in disciplinary action. Learned counsel of the workmen argued that the respondents/managements violating the condition of letter dated 25.08.2000 engaged workmen as per needs and requirement violating the terms and conditions of the letter dated 25.08.2000 and instead taking action against erring officials, the workmen were retrenched from service by giving so called notice of one month. In this connection, learned counsel of the workmen has drawn my attention towards the statement of the sole witness of the management Vikram Jeet, DE (Admn.) in which he has admitted that workmen did not received the retrenchment compensation, which is still lying in the management except Krishan Lal, who has received this compensation. This witness has accepted that the facts alleged in the policy Ex.P-2 dated 25.08.2000 is correct and no disciplinary action has been taken with respect to the erring officials in the light of the direction incorporated in the letter itself. This witness has further accepted that instead of taking action against the officials of the management, workers were retrenched from their services. This witness has further denied any knowledge about the notice (if any) sent to the appropriate government regarding the retrenchment of the workers. According to this witness, there is no copy of the notice sent to the appropriate government in the file. This witness has further accepted that part time workers are regularized in the management as is mentioned in the Ex.P-3. Thus, the statement given by the management-witness itself proved that compliance of Section 25-F or 25-N of the ID Act for sending notice to the government or competent-authority has not been complied with in letter and spirit. There is nothing on record in the form of documentary proof that any notice is sent to the concerned-authority or appropriate government as is required in Section 25-F or 25-N of the Industrial Disputes Act, 1947.

11. It is pertinent to mention that Hon'ble Supreme Court in the case of ***M/s Empire Industries Ltd. Vs. State of Maharashtra & Ors., Civil Appeal No. 3003 of 2005*** has specifically held that section 25-N is a complete scheme for retrenchment of the workmen where a number of workers are in excess of 100 workmen. In present case, as alleged, there are more than 270 workmen which has not been controverted by the management in such circumstances, non-compliance of the provision of Section 25-N is damaging to the stand taken by the management regarding the issuance of notice to the workmen. Furthermore, before issuing a notice to the workmen under Section 25-N prior permission of the concerned-authority or government has to be taken before issuing notice to workmen. As per the Hon'ble Supreme Court, any retrenchment of the workmen can only be done under the provisions laid down under the Act and Rules. So far as sending notice to the competent-authority or the government under Section 25-N is concerned. It has not been duly complied as per the evidence on record. Hon'ble Supreme Court in the case of ***Ajaypal Singh Vs. Haryana Warehousing Corporation, Civil Appeal No. 6327 of 2014, decided on July 9, 2014*** and in the case of ***Raj Kumar Vs. Director of Education and Oths., Civil Appeal No. 1020 of 2011, decided on April 13, 2016,*** has held that Industrial Disputes Act, 1947 is a beneficial legislation and its object is for settlement of the Industrial Disputes. It provides unfair labour practice on the part of the employer in case of engaging employees/temporary employees for a long period without giving the status of permanent employees. As per the Hon'ble Supreme Court the condition mentioned in Section 25-N of the Industrial Disputes Act is mandatory and it mandates the employer to serve a notice in the proper manner for the appropriate government or such authority as is specified

by the appropriate government by notification in the official gazette. Same view is reiterated by the Hon'ble Supreme Court in the case of ***Raj Kumar(supra).*** As per the Hon'ble Court, since mandatory condition for retrenchment were not complied with retrenchment is liable to be set aside. In nutshell, it can be observed in the light of the judgment of the Hon'ble Apex Court that the nature of notice envisaged under Section 25-F and 25-N of the Industrial Disputes Act, 1947 is not derogatory but mandatory and employer/respondents-managements were duty bound to comply the procedure laid down in Section 25-F and 25-N in letters and spirit before terminating/retrenchment of the services of the workmen.

12. Learned counsel of the respondents/managements argued that management has complied the provision of Section 25 of the Industrial Disputes Act and apart from sending notice, compensation is offered to each workmen and few has accepted while few has not accepted. As per argument of management-counsel, this issue cannot be raised in Tribunal by virtue of principal of estoppell. So far as the receiving or non-receiving of the compensation is concerned, learned counsel of workmen argued that if the compliance of Section 25-F or 25-N of the Industrial Disputes Act, 1947 is defective or not complied with then question of acceptance or non-acceptance of the compensation become irrelevant because before giving retrenchment compensation notices are required to be sent in the manner specified therein. In this connection, learned counsel has drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of ***Nar Singh Pal Vs. Union of India and Oths., Civil Appeal No. 2280 of 2000, decided on March 29, 2000,*** in which the argument of the management is nullified by the Hon'ble Supreme Court by observing that acceptance of compensation does not close the right of the workmen to challenge the retrenchment because this concept is erroneous and is not correct one. As per the Hon'ble Supreme Court, the casual labour who served for a long time does not surrender all his consequential rights in favour of the respondents/managements. As per the Hon'ble Supreme Court, fundamental rights under the Constitution cannot be barred away and it cannot be compromised or there cannot be estopple of the fundamental right available under the Constitution. Thus, the argument advanced by the learned counsel of the management for acceptance of compensation and principle of estoppel has no force and liable to be rejected.

13. Now the residual question is whether the claimants/workmen are entitled to any incidental relief of payment of back wages and/or reinstatement of service with full back wages. It is proved on record that the claimants are working as part time Sweeper in the managements/respondents for the last 10 to 13 years prior to their termination on 04.09.2013. There is no legal show cause notice or charge-sheet issued to the claimants/workmen by the respondent/management. Moreover, the job of the claimants/workmen to do cleaning, sweeping of the premises of the respondent/management is of perennial and regular in nature. **It is pertinent to mention that claimants/workmen have not pleaded and testified that they are totally unemployed since their termination/retrenchment.**

14. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

> ***"The propositions which can be culled out from the aforementioned judgments are:***
>
> *(i)* ***In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.***
>
> *(ii)* ***Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."***

15. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to

continue in employment as if his service was not terminated. ***(Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (2010) 5 SCC 497).***

16. A Bench of three Judges of the Hon'ble Supreme Court in the case of ***Hindustan Tin Works Private Limited Vs. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80*** held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

17. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

> ***"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calendar year."***

18. Yet in another latest case of **Bholanath Lal and others Vs. Shree Om Enterprises (P) Ltd., Manu/DE/1922/2018** (decided on 10/5/2018), Hon'ble High Court of Delhi while considering the question of illegal termination and reinstatement held as under:-

> ***"The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same The courts must always keep in view that that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages."***

A similar view has been taken in the case of **Delhi Jal Board Vs. Vimal Kumar (decided on 5-4-2018) MANU/de/1322/2018** wherein service of a casual driver was terminated without any notice or payment of one month's salary in lieu of such notice. The Industrial Tribunal answering the reference held the action of the management to be illegal and in violation of Section 25-F of the Act. The Award was upheld by Hon'ble High Court of Delhi by observing as under:-

> ***"In view of the above discussion, I am unable to discern any illegality or infirmity in the impugned Award, dated 29th May, 2003, of the Labour Court, to the extent that it holds the termination of the services of the respondent, by the petitioner, to be illegal and unlawful. I am entirely in agreement with the finding, of the Labour Court, that the services of the respondent were retrenched in violation of Section 25-F of the ID Act and that, therefore, he was entitled to be reinstated in service with all consequential benefits. In view of the fact that going by the age of the respondent as disclosed in the counter affidavit filed before this Court, he would, today, be only 50 years of age, and also in view of the fact that the termination of his services as SCM Driver was not on account of***

any deficiency or shortcoming detected in the manner of discharge by the respondent, of his duties as such, I am of the opinion, that the facts of the present case, do not warrant any interference with the direction, of the Labour Court, to the petitioner to reinstate the respondent in service with the benefit of continuity of service. The petitioner is, therefore, directed to reinstate the respondent in service forthwith.

Inasmuch as the respondent has not been rendering any service to the petitioner since the date of his termination, however, the back wages payable to the respondent would be limited to 50 per cent of the wages which he would have drawn he had continued to serve the petitioner….."

19. Having regard to the legal position as discussed above and the facts that the workmen/claimants herein were performing duties of regular and perennial nature, this Tribunal is of the firm view that the workmen/claimants have been terminated without following the procedure laid down under Section 25 of the ID Act. It is pertinent to mention that they have neither pleaded nor testified that they are totally unemployed since their termination/retrenchment. Hence, they are entitled for reinstatement into service on the same post from the date of their termination/retrenchment with 50% back wages, inasmuch as termination of the workmen/claimants are per-se illegal. Award is passed accordingly.

A. K. SINGH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 584.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स सेंट्रल इंस्टीट्यूट ऑफ फ्रेश वाटर एक्वाकल्चर, कौसल्यागंगा, खुर्दा (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 20/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-42012/62/2013-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 584.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 20/2014) of the Central Government Industrial Tribunal-cum -Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Central Institute of Fresh Water Aquaculture, Kausalyaganga, Khurda (Odisha) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-42012/62/2013-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

I.D. Case No. 20 OF 2014

Dated Bhubaneswar the 11th November, 2019

Present: Shri B.C. Rath, LL.B, Presiding Officer,

C.G.I.T., Bhubaneswar

Between :

The management of Central Institute of
Fresh Water Aquaculture, Kausalyaganga,
Bhubaneswar-2, Khurda (Odisha) …First party-management

AND

Their workman Sri Sarat Chandra Khuntia
C/o Golakha Chandra Raou, Retd. Dy.Supdt.
(Fishery), At. Puba Sasan, At/P.O. Kausalyaganga,
Bhubaneswar-2, Khurda (Odisha). ...Second Party-workman

Appearances:

Sri Indramani Muduli : For first party management

Sri Sarat Chandra Khuntia : Second party workman himself

AWARD

The Government of India, Ministry of Labour and Employment have referred the industrial dispute for adjudication vide its Order No. L-42012/62/2013 IR(DU) dated 18/20.03.2014 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (herein after referred to as the "Act") and the term of reference reads as follows:

> "Whether the action of the management of Central Institute of Fresh Water Aquaculture, Kausalayaganga, Bhubaneswar, Odisha by imposing compulsory retirement of Shri Sarat Chandra Khuntia, SSG, Grade-II on 16.04.2009 is legal and or justified ? If not what relief Sri Khuntia is entitled to ?"

2. Briefly stated, the case of the second party-workman is that he joined in the establishment of the first party-management on 18.11.1976 as a casual labour. His service was regularized in the year 1983. He was promoted to the post of Supporting Staff Grade-II with effect from 17.03.1998. He was discharging his duties and responsibilities to the best of his ability and utmost satisfaction of his authorities. The employees of the management formed a Trade Union in order to protect and secure better service condition and the union was registered in the name "Central Fisheries Research Employees Association (CFREA)". According to the workman he was elected as General Secretary of the said union in the year 1998. Being office bearer of the union, he was a member of an Institute of Joint Staff Council (IJSC). Being a member of IJSC and office bearer of the employees union, he submitted a written complaint to the Director, CIFA in order to against illegal selling of Prawn produced in the firm of the management. Copy of the said complaint was also sent to the Director General of ICAR. On 5.7.2003 he sought for an appointment from the Director General of ICAR to apprise him about the problems and demands of the employees of the management. But he was misbehaved by the Director General for which the Association/Union in the general body meeting passed a resolution on 07.07.2003. Consequently the authority of the management placed him under suspension on some pretext and initiated a departmental proceeding. Charge-sheet was issued with allegation that he misbehaved with Ex-Director publicly and entered into the hatchery unauthorisedly and instigated the staff of the hatchery not to obey the direction of the superiors and for allegedly making derogatory remark against the Director and other superior officials. He was also charged for having unauthorized entry to the office chamber of the Director and misbehaving him while he was holding official meeting of functionaries of the management.

3. It is the claim of the workman that the charges were false, baseless and vexatious. When he challenged the disciplinary proceeding in the Hon'ble Central Administrative Tribunal, Cuttack Bench, the management cancelled the said charge-sheet vide Office Order No. 152 dated 20.07.2004 and issued another charge-sheet on 21.7.2004 on self and same ground while his application was pending before the learned CAT, Cuttack Bench. He had also challenged the second charge-sheet in the learned CAT, Cuttack Bench vide O.A. No. 114/2005.

He was represented through defenece assistance Sri Sankarshan Pradhan, Senior Audit Officer, office of the Accountant General, Bhubaneswar in the departmental enquiry. As the Enquiry Officer did not issue attendance certificate for his participation in the enquiry held on 3.4.2005 and 25.7.2005, his defence assistant submitted a letter to the Enquiry Officer on 3.8.2005 for issuance of his attendance certificate. He also made a prayer before the Enquiry Officer on 11.8.2005 for issue of such certificate otherwise his defence assistant would find it difficult to represent him on subsequent dates in the departmental enquiry. Though the Enquiry Officer was under obligation to issue such a certificate to a defence assistance representing the delinquent, he did not comply the obligation inspite of the request of the delinquent-workman as well as his defence assistance. Hence he filed a petition for changing of Enquiry Officer on the ground of biasness and moved the appropriate authority for staying the departmental enquiry. During pendency of such petition for changing of Enquiry Officer and for non-issuance of attendance certificate in favour of the defence assistance for the dates in which he represented the delinquent-workman, his defence assistance could not take part in the departmental enquiry. The Enquiry Officer conducted the enquiry in absence of the workman as well as his defence assistance after

making the delinquent-workman exparte. It is alleged by the workman that he was not furnished copy of the day to day proceeding held in the enquiry. Therefore he could not take part in the enquiry on subsequent dates. He was also not furnished with second show-cause notice prior to imposition of the punishment of compulsory retirement with effect from 16.04.2009 in the departmental proceeding. The departmental proceeding was not conducted in conformity to the principles of natural justice and provisions of the C.C.A. Rules. The Enquiry Officer did not discharge his duty in a fair, proper and impartial manner. As such his punishment of compulsory retirement in the departmental enquiry was illegal and unsustainable in the eye of law.

4. It has been further pleaded that an industrial dispute vide I.D. case No. 9 of 2009 was pending before the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar at the time of departmental enquiry and in the said dispute he was a party against the management. Because of pendency of such a dispute and he being a concerned party, the management is under statutory obligation to take prior permission or approval of this authority before taking any action against him. As, such his compulsory retirement without approval of the Industrial Tribunal under Section 33 (3) or 33-2(B) of the Industrial Disputes Act is not sustainable in the eye of law. According to him, he preferred an appeal under Rule 23 of the Central Civil Service (Classification, Control & Appeal) Rules,1965 to the Secretary, Indian Council of Agricultural Research, Krishi Bhawan, New Delhi against such punishment in the departmental enquiry. When his appeal was rejected and punishment of compulsory retirement was confirmed by the Appellate Authority, he raised an industrial dispute before the labour machinary-cum-Conciliation Officer. As the conciliation could not be held due to non-cooperation of the management, a dispute has been referred to this Tribunal for adjudication.

5. Being noticed, the management filed its written statement and participated in the hearing at the initial stage. In their written statement the management has resisted and refuted the claim and allegation raised by the workman. It is the claim of the management that the workman indulged in indiscipline activities and instigated the staff to go against their authorities. He passed derogative remarks against the Director and other superior officers of the management, he forcibly entered in to the chamber of Director, CIFA and misbehaved the Director General of ICAR, New Delhi when he came to the office of CIFA at Kaushalyaganga and holding a meeting of functionaries of CIFA. Hence a charge-sheet was issued to him after placing him under suspension. His explanation to the charges being not satisfactory, a departmental enquiry was held in a fair and proper manner. According to the management, the disputant workman was given all opportunities to defend himself in the enquiry. The disputant workman avoided the enquiry by raising allegation of biasness against the Enquiry Officer. According to it, no protection or order was ever given either by the learned CAT, Cuttack Bench or the Hon'ble High Court in such departmental enquiry. In the disciplinary proceeding the workman was found to have committed misconducts as alleged in the charge-sheet. Considering the seriousness/gravity of misconducts he was punished with compulsory retirement. So there was no flaw either in the charge-sheet or departmental enquiry warranting any interference. The Hon'ble High Court as well as the learned CAT, Cuttack Bench directed to conduct the disciplinary proceeding and to complete the same within a stipulated period i.e., within 60 days. Accordingly the enquiry conducted within the stipulated period and punishment of compulsory retirement was given to the workman after disposal of the writ. Since the disciplinary action was taken by the management under the orders of the Hon'ble High Court and learned C.A.T., Cuttack Bench, there was no requirement for compliance of provisions of Sections 33 (3) or 33-2(B) of the Industrial Disputes Act. The management has also challenged the maintainability of the case raising a plea that the disputant workman has preferred a writ application before the Hon'ble High Court as well as the CAT. The writ application before the Hon'ble High Court being preferred on self and same cause and pending before the Hon'ble Court, the reference is bad in the eye of law. The statement of claim of the disputant workman is to be rejected keeping in view of the pendency of the grievances of the disputant workman before the Hon'ble High Court. Thus it has been prayed by the management for rejection of the claim statement of the disputant workman.

6. On the aforesaid pleadings of the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

(i) Whether the reference is maintainable under the Industrial Disputes Act ?

(ii) Whether the action of the management of Central Institute of Fresh Water Aquaculture, Kaushalayagang, Bhubaneswar compulsorily retiring of Shri Sarat Chandra Khuntia, SSG Grade-II on 16.04.2009 is legal and or Justified ?

(iii) If not, what relief Shri Khuntia is entitled to ?

7. The disputant workman has adduced oral as well as documentary evidence in support of his claim. He has been examined as W.W.1 and he has filed documents like, copy of last pay slip, copies of written complaints, copy of the petition dated 3.7.2003, copy of resolution dated 7.7.2003, copy of suspension orders dated 7.7.2003 and 9.7.2003, copy of charge-sheet dated 30.9.2003, copy of reply dated 13.12.2003, copy of the letter of the Enquiry Officer, copy of time petition of the workman dated 19.3.2004, copy of the letter of the Enquiry Officer dated 22.3.2004, copy of the order regarding cancellation of the charge-sheet, copy of the second charge-sheet dated 21.7.2004, copy of letter for defence assistance dated 3.8.2005, copy of the letter of the workman to the Enquiry Officer dated 11.8.2005, copy of the bias petition of the workman dated 24.9.2005, copy of the letter rejecting the bias petition dated 9.12.2005, copy of the petition dated 20.12.2005, copy of the letter of defence assistant dated 19.12.2005, copy of the letter of the Enquiry Officer dated 31.12.2005, copy of the reply of the workman dated 12.1.2006, copy of the orders of the Hon'ble High Court, copy of the representation of the workman dated 1.6.2006, copy of the Order of the Hon'ble High Court dated 6.4.2009, copy of the order regarding compulsory retirement dated 16.4.2009, copy of Memorandum of Appeal of the workman dated 1.6.2009, copy of rejection of the Appeal dated 19.8.2010 and copy of the order of reference dated 13.2.2009 marked as Exts. 1 to 28 respectively. On the other hand the management did not participate in the proceeding while the case was posted for evidence of the disputant workman on a pretext that a writ was pending on self and same allegations. The management was issued with notices on different occasions for taking part in the proceeding, but it failed to attend the proceeding and to cross-examine the disputant workman. The management filed a petition claiming that a writ was pending before the Hon'ble High Court on the self and same ground and made a prayer for staying the hearing of the case. Inspite of filing of a petition by the disputant workman that the writ was disposed of without deciding its merit and inspite of intimations given in this regard to the management, it did not come forward to participate in the proceeding. In the above back drops the adjudication of the dispute could be made on the sole evidence of the disputant workman and in absence of the management.

8. Having regard to the peculiar facts and circumstances of the case narrated above and for the sake of convenience all the issues are taken into consideration simultaneously and the findings are as follows:-

9. Though, no serious dispute has been raised in regard to the reference either in a context that CIFA management is not an "industry" as defined under the Industrial Disputes Act or there was no industrial dispute as claimed by the disputant workman, the only objection to the maintainability of the reference as per written statement is that keeping in view the pendency of a writ preferred by the disputant workman on self and same ground and the allegation made by the workman having been taken into consideration by the learned Central Administrative Tribunal and by the Hon'ble High Court on the application of the disputant workman, there is no scope for adjudication of the dispute in the Tribunal under the provisions of Industrial Disputes Act. It appears from the pleadings of the parties as well as the evidence of the workman that an application in the learned C.A.T and the writs were preferred challenging the initiation of the departmental proceeding after issue of charge-sheet. There is nothing before this Tribunal to hold that the fairness of the departmental enquiry or punishment of compulsory retirement of the disputant workman was ever a subject matter either before the learned CAT, Cuttack Bench or in the Hon'ble High Court. As per the settled position of law and principles, the present Tribunal is competent to adjudicate the dispute under reference keeping in view that the same relates to the service condition of a workman and that there is no serious dispute that the management is covered by the term "industry" as defined in the Industrial Disputes Act. The workman being an employee of Central Government concerned has option either to approach directly to the learned C.A.T or to raise an industrial dispute under the Industrial Disputes Act.

10. Now coming to the issue of fairness of departmental enquiry, it may be stated here that as per settled principles of law the fairness of the departmental enquiry should be heard and disposed of as a preliminary issue and in case the issue is answered against the management and it is held that the departmental enquiry was not conducted as per the principles of natural justice or provisions of the Standing Orders of the management, the management shall be given an opportunity to prove the misconduct by adducing the evidence in this regard.

11. In this regard, it is profitable to Court the observation of the Hon'ble Apex Court made in the case of Delhi Cloth and General Mills Co. Vs. Ludh Budh Singh, AIR 1984 SC 153 ;

(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

(2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it in the first instance and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance to consider whether the enquiry proceedings conducted by the management are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits no longer survives. IT is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence."

11. Coming to the case at hand, it is found from the pleading of the management that it has not taken any specific stand (i) that it does not rely upon the departmental enquiry for which it is straightway adduce evidence before this Tribunal justifying its action, or (ii) that it is relying upon the domestic enquiry held by it in the first instant and alternatively and without prejudice to its plea when the enquiry is proper and binding, simultaneously it is to adduce additional evidence justifying its action, or (iii) that it is relying on the enquiry held by it and also simultaneously ready to adduce evidence before this Tribunal if preliminary issue of fairness of departmental enquiry is answered against it. On the other had it has been pleaded by the management in its written statement that the departmental enquiry was conducted fairly and in proper manner in conformity to the principles of natural justice and (C.C.A) Rules. The disputed workman having challenged the departmental enquiry before the learned C.A.T, Cuttack Bench, Cuttack as well as before the Hon'ble High Court has no scope to bring an industrial dispute in the Tribunal on the self and same cause of action. It is the stand of the management that the subject matter of O.A. case and the writ being similar to the dispute raised in the reference, this Tribunal is barred to entertain and adjudicate the dispute.

12. But, on a perusal of the pleadings and evidence of the disputant workman and the pleadings advanced by the management in the written statement, it is found that the fairness of departmental enquiry/domestic enquiry or punishment of compulsory retirement was not ever a subject matter of dispute either in the O.A. application preferred before the learned CAT, Cuttack Bench or in the writ application filed before the Hon'ble High Court. Hence the stand of the management that the workman had claimed relief on the self and same matter is not acceptable. The O.A. application and Writ Application were preferred on different context i.e., for quashing of the departmental proceeding or staying the departmental enquiry. In the event of workman being found guilty of misconduct in the departmental enquiry and imposition of punishment of compulsory retirement, a fresh cause of action seems to have been arisen for the workman to take the shelter of an appropriate Court of law. It seems that in the said case he had a legal right to approach either C.A.T. under the Administrative Tribunal Act,1985 or to this forum under the provisions of the Industrial Disputes Act,1947 provided the employer is an "industry" as defined in the Industrial Disputes Act and the dispute raised by him is an "industrial dispute". This matter is already dealt with supra. Hence, it can safely be stated that no illegality or wrong is committed by raising a dispute in this Tribunal under the provisions of the Industrial Disputes Act.

13. Since the management has neither pleaded in their written statement nor come forward to say that the fairness of the departmental enquiry to be heard as preliminary issue and it should be given opportunity to adduce oral evidence in case the departmental enquiry is held not fair and proper, there is no bar to the Tribunal to take up all the issues at a time or simultaneously for just and proper adjudication of the dispute.

14. Be that as it may be, on a close scrutiny of the oral testimony of the workman, it is found that the same is not confronted or controverted by the management, as the management did not participate in the cross-examination of the workman taking a plea and filing a memo to the effect that same issues are the subject matter of the writ pending before the Hon'ble High Court. It is seen that the workman has categorically stated in his evidence that the departmental enquiry was held in his absence and in absence of his representative. His defence assistant could not attend the departmental enquiry as he was not issued with attendance certificate by the Enquiry Officer. In this regard, he brought to the notice of the Enquiry Officer. It is also stated by him that he was not furnished with the copy of the day to day proceeding of the departmental enquiry. He was not provided with the copy of the enquiry report and second show-cause notice. In absence of cross-examination by the management, there is nothing before this Tribunal to disbelieve or to discard the evidence of the disputant workman. No material is placed either in the written statement or in shape of evidence by the

management to establish that the departmental enquiry was conducted in fair and proper manner. The disputant workman was given opportunity to defend himself and provided all relevant papers by which his misconducts are to be established and he was provided with the copies of day to day proceedings of the departmental enquiry. There is also no material before this Tribunal in absence of specific pleadings and evidence of the management to show that the second show cause notice was issued to the workman before imposition of major penalty.

15. On the other hand, it is in the pleadings and evidence of the workman that a prior industrial dispute was pending for disposal in this Tribunal at the time of his compulsory retirement in the departmental enquiry. The disputant stated to be an office bearer of the Union and he was a concerned party to the earlier dispute. The management has not specifically denied the pendency of such a dispute before this Tribunal. Action of compulsory retirement was taken against the disputant workman by the management when a dispute was pending for adjudication. On a contrary, the management submitted in its written statement that no prior permission or prior approval under Section 33(3) or 33-2(B) of the Industrial Disputes Act was required since the departmental enquiry was concluded and punishment was given pursuant to the direction of the Hon'ble High Court and learned C.A.T., Cuttack Bench that the departmental enquiry shall be completed with in a stipulated period of 60 days. Such plea of the management can not stand in the eye of law or the same can not be accepted keeping in view of the provisions enumerated in Section 33(3) or 33-2(B) of the Industrial Disputes Act. That apart neither the Hon'ble High Court nor the learned C.A.T., Cuttack Bench has given any direction or relief exempting the management from adopting the requirements as enumerated in the mandate of the Industrial Disputes Act. The writ filed by the workman vide W.P(C) No. 343/2006 is found to be disposed of due to non-taking of steps by the workman. The O.A. case in the C.A.T. and writ were preferred for quashing the departmental enquiry. On the other hand, there is no serious dispute that the workman being an office bearer of the union, is a protected workman and as such, prior permission is required for taking any action against him. Thus, it seems that the management has given compulsory retirement to the workman without following the provisions as laid down in Section 33 of the Industrial Disputes Act even though it was aware of the pendency of a previous dispute in the Tribunal wherein the workman was a concerned party.

16. On the analysis and reasons assigned above it can be concluded that neither the departmental/domestic enquiry was held in accordance with principles of natural justice, nor the action of compulsory retirement was taken as per requirement of Section 33(3) or 33-2(B) of the Industrial Disputes Act. Hence the punishment of compulsory retirement of the disputant workman on being found of guilty of misconduct in a domestic enquiry can not be sustainable in the eye of law. As such, the same is found to be illegal and unjustified.

17. Now coming to on the issue of the relief to which the workman is entitled to. It is to be stated here that the workman has already attained the age of superannuation in the meanwhile. Hence no award of reinstatement of the workman can be passed. But having regard to the facts and circumstances of the present case, as analised above, the workman is entitled to his back wages and other service benefits being deemed to be in continuous service from the date of his compulsory retirement till the date of his superannuation. But, so far the suspension period is concerned, the same shall be treated as such since the compulsory retirement of the workman is found not in conformity to the provision of Section 33 of the Industrial Disputes act. Accordingly, he is also entitled to all pensionary benefits which he could be entitled to being in service. Further, the Award is to be implemented within 90 (ninety) days from the date of its publication in the Gazette failing which, the workman is entitled to interest on the amount at Bank rate on fixed deposit from the Gazette Notification of the Award till its realization.

The Award is passed and the reference is disposed of accordingly.

Dictated and corrected .

B. C. RATH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 585.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निदेशक, क्षेत्रीय अनुसंधान प्रयोगशाला (सीएसआईआर) भुवनेश्वर (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ सं. 25/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-42012/127/1998-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 585.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2017) of the Central Government Industrial Tribunal-cum Labour Court, Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Regional Research Laboratory (CSIR) Bhubaneswar (Odisha) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-42012/127/1998-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 25 OF 2017

Dated, Bhubaneswar the 20th April, 2020

Present: Shri B. C.Rath, Presiding Officer,

C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

The Director,
Regional Research Laboratory (CSIR).
Bhubaneswar – 751012. ...First party management

AND

Shri Suresh Kumar Pradhan,
S/o. Shri Karunakar Pradhan,
Village-Gobindapur, PO. Chananhat,
PS/Via – Bali Patana,
Dist. Khurda, Odisha – 7520055. ...Second party workman

Appearances:

Shri C.M. Tudu : For first party management

Shri S. K. Pradhan : Second party workman himself

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No.L-42012/127/1998–IR(DU)) dated 4.6.2012 in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (hereinafter referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the action of the management of Director Regional Research Laboratory (CSIR) Bhubaneswar in terminating the service of the workman Shri Suresh Kumar Pradhan, Electrical Helper w.e.f. 01.04.1995 is legal and justified? If not, what relief Shri Suresh Kumar Pradhan is entitled to ?"

2. The disputant second party workman has filed a statement of claim pleading inter-alia that he was working as Electrical Helper continuously and uninterruptedly for the period from 14.7.1988 to 31.3.1995 in the establishment of the first party management which was earlier named as Regional Research Laboratory (CSIR), Bhubaneswar. His service was suddenly terminated with effect from 1.4.1995 without compliance of statutory provision of Section 25-F of the Act i.e., without notice pay in lieu of notice and retrenchment compensation. After termination of his employment the RRL was renamed as Institute of Minerals and Materials Technology (IMMT), Bhubaneswar and the said management appointed new person in his place and thereby it has violated the provision of Section 25-H of the Act. Hence he raised a dispute before the Regional Labour Commissioner (C), Bhubaneswar on 15.4.1998. Since the dispute raised by him was not referred to for a judicial adjudication, he preferred a writ in the Hon'ble High Court of Odisha in WP(C) No. 15594/1998 making a prayer to refer the dispute for its adjudication. The Hon'ble High Court directed the Ministry of Labour to refer the dispute vide its

order dated 6.10.2016. Consequently the reference is made as stated earlier. The disputant has prayed for his reinstatement with back wages and all service benefits alleging that the termination was illegal.

3. The first party management Institute of Minerals and Materials Technology, Bhubaneswar has contested the claim and refuted the allegation raised by the disputant. It has been pleaded by the said management that the disputant was never engaged or appointed in any capacity in the establishment of RRL. Besides, it has been asserted that the disputant was issued with work order for maintenance of electrical services in its campus and building. He was given a contract for maintaining electrical instalment in the quarters as well as office building. The disputant was not engaged either as a labourer or an electrician or electrical helper either on monthly or daily wage basis. There was no relationship of employee and employer between the disputant and the management. The management being a research institute is not also an industry and therefore, provisions of the Act are not applicable to it. On the above pleading, the management has prayed for dismissal of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues were settled for just adjudication of the dispute.

ISSUES

(i) Whether the reference is maintainable ?

(ii) Whether the action of the management in terminating the services of the workman with effect from 01.04.1995 is legal and justified ?

(iii) If not, what relief the workman is entitled to ?

5. In order to establish his claim, the disputant has examined himself as W.W.1 and filed the copies of experience certificates issued by the management and the work order marked as Ext.1 to Ext.3 whereas, the management has examined its Section Officer as M.W.1 to refute the claim.

FINDINGS

6. The disputant workman claims to have been engaged/employed as Electrician/Helper in between 1988 to 1995 whereas, the management has asserted that he was allotted a contract job for maintenance of electrical services in the office building of the management, quarters and campus. Law is well settled that onus is on the workman to prove his employment/engagement in the establishment of the management. Besides, a duty is also cast upon him by adducing credible/sufficient evidence to show that he worked for 240 days in a year preceding to his retrenchment/termination. Thus, the claimant is to lead evidence to show that he had in fact worked for the management either for daily wages or monthly wages and his engagement was for more than 240 days in the year preceding to his termination. Filing of a self affidavit cannot be regarded as sufficient evidence in the Court or Tribunal as per the settled principle. Hence, the disputant workman has to file or show some sort of documents or any other credible oral or documentary evidence towards his appointment or engagement for the period claimed by him.

7. Coming to the case at hand, it is found from the oral evidence of the disputant that though he claims to have been engaged in between 1988 to 1995, he has not whispered a word as regard to amount to which he was receiving from his employer towards his wages to strengthen his claim he had relied upon certain documents marked as Exts.1 to 3. Exts.1 and 2 are purported to be experience certificates issued in his favour for his work/engagement in the establishment of RRL. On a close reading of both the certificates it is found that Ext.1 was issued by one K.B. Behera, Electrical Assistant of RRL and it discloses that the disputant workman was working in the RRL from March, 1987 to till the date of issue of the certificate as a Helper with the contractor in electrical maintenance section. Ext.2 seems to be issued by a electrical contractor under whom the disputant was working for maintenance of electrical installations. Mere reading of the said certificate (Ext.2) further discloses that the disputant was working in the organization of the contractor who had issued a certificate that the disputant was engaged in RRL Campus. Ext.3 is a work order for electrical services at RRL Campus issued on 23.7.1993. The work order was issued to the disputant for providing one skilled electrician/mistry and two semi-skilled electricians on a daily wage basis. From the bare reading of Exts.1 and 3 one can safely infer that the disputant was given contract job for electrical maintenance and he was not appointed or engaged to work in the establishment of the management. Further, the documents relate to the year 1993 whereas, the disputant is staid to have been disengaged with effect from 1.4.1995. There is no credible or sufficient evidence to show that he was working with the first party management till 31.3.1995 and he worked for 240 days in between 1.4.1994 to 31.3.1995 being appointed or engaged by the management. Thus, the evidence of the disputant is not at all sufficient or credible to establish that he was appointed or engaged by the first party management erstwhile

known as RRL in any point of time. When the engagement/employment is not proved by sufficient evidence, question does not arise for termination or retrenchment of the disputant with effect from 1.4.1995.

8. Keeping in view the finding/observation made above, there is no need to go into other issues like maintainability and whether the management is an industry or not. For the reasons mentioned above, the statement of claim has no merit for consideration.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 586.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स रबंध निर्देशक, ओरिएंटल सिक्योरिटी सर्विस, भुवनेश्वर, (ओडिशा) और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय,- भुवनेश्वर के पंचाट (संदर्भ संख्या 60/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-42011/129/2016-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 586.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 60/2017) of the Central Government Industrial Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the Industrial dispute between the employers in relation to The Managing Director, Oriental Security Service, Bhubaneswar, (Odisha) & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-42011/129/2016-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 60 OF 20117

Dated Bhubaneswar, the 16th March, 2020

Present: Shri B. C. Rath, Presiding Officer,

C.G.I.T-cum-Labour Court, Bhubaneswar

Between:

1. The Managing Director,
M/s. Oriental Security Service, Plot No.588,
Saheed Nagar, Bhubaneswar (ORISSA) – 751007.

2. The Regional Dirfector, Indira Gandhi National Open University (IGNOU Regional Centre) Plot No. C-1
Industrial Area, Bhubaneswar (ORISSA) – 751007. ...First party managements

AND

The General Secretary, All Orissa Private Security
Karmachari Sangha, C/o. L.Biswal, At. Arobinda Colony,
Plot No. 836, B.J.B. Nagar, Bhubaneswar (ORISSA) – 751007. ...Second Party Union

Appearances:

Sri P. K. Swain : For first party Management No.1.

Sri P. K. Singh : For second party Union.

AWARD

The Government of India, Ministry of Labour have referred the industrial dispute for adjudication vide its Order No. L-42011/129/2016 – IR(DU) dated 09.10.2017 in exercise of powers conferred by clause (d) of sub-section (10 and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 0f 1947) (herein after referred to as 'the Act') and the terms of reference reads as follows:

> "Whether the demand of the union to pay Bonus @ 8.33% for the financial year 2010-11 to 2015-16 to the workman Sri Dillip Kumar Parida, Ex-Security Guard by the mgt. of M/s. Oriental Security Services during the period of his employment at the establishment of PE i.e. IGNOU as per provision of law is legal and justified ? If so, what relief the workman is entitled to ?"

2. The case of the second party workman as emerging from his statement of claim is that he was deployed as a Security Guard in the establishment of the first party management No.2 being hired/outsourced through the first party management No.1. He was appointed as Security Guard on 10.3.2010 and continued as such till 1.2.2016 when he resigned from service on personal ground. He worked continuously and uninterruptedly for six years being deployed as Security Guard. As per the term and condition of his employment he was entitled to receive bonus @ 8.33% of his pay for the financial years 2010-11 to 2015-16. He was receiving Rs.333/- as wages on each day of his duty. After his resignation from service he approached both the managements for the amounts to be paid towards bonus for the above period. When the management failed to pay any heed to his demand, a dispute was raised through the second party Union before the labour machinery. As the conciliation failed before the labour machinery, the reference is made as stated earlier.

3. The first party managements have appeared and filed their written statements separately. The first party management No.1 outsourcing agency has taken a stand that the payment of Bonus Act,1965 is not applicable to the Universities and educational institutions for which he was not receiving any amount/fund in that purpose so as to enable him to pay bonus to the Security Guards deployed through him. There was no term and condition to provide bonus to the disputant workman when he was engaged and deployed in the establishment of the first party management No.2. The first party management No. 2 has also taken similar stand by pleading that since payment of Bonus Act,1965 is not applicable to the educational institution, the disputant workman is not entitled to any bonus as claimed by him. Thus, both the managements have prayed for rejection of the statement of claim.

4. On the aforesaid pleadings of the parties, the following issues have been settled for just and proper adjudication of the dispute.

ISSUES

(i) Whether the reference is maintainable in the eye of law ?

(ii) Whether the management No. 2 is legally bound to give bonus @ 8.33% to the workman for the financial year 2010-11 to 2015-16 ?

(iii) If so, what relief the workman is entitled to ?

5. To substantiate his claim, the second party workman has examined himself as A.W.1 and relied upon the documents like copy of settlement dated 15.1.2016, copy of resignation letter dated 10.2.2016 of the workman, copy of letter dated 16.11.2016 to the A.L.C (C), Bhubaneswar, copy of reply of IGNOU dated 10.3.2016 with enclosure under RTI Act, copy of pay slip for the month of August, 2015 of the workman, copy of duty slip No. 000165 of the workman and copy of wage slip of the workman marked as Exts. 1 to 7 whereas both the managements have not adduced any evidence in support of their cases.

FINDINGS

6. For the sake of convenience, all the issues are taken up together simultaneously.

7. As it appears from the pleadings advanced by the parties and evidence of the disputant workman Sri Dillip Kumar Parida i.e. W.W.1 is that no serious dispute is raised to the fact that Sri Parida disputant workman was deployed as Security Guard in the establishment of the management No.1 of IGNOU for the period from 10.3.2010 to 1.2.2016. The management No.1 as an outsourcing agency had deployed Security Guards in the establishment of management No. 2. There is also no serious dispute to the claim of the second party Union that Sri Parida was not provided bonus as per the Statute i.e., the Bonus Act during the period of his service. His claim was not considered on a plea that the provision of the Bonus Act is not applicable to the educational institution. Admittedly the disputant workman was discharging duty of security guard and as such, he is not a field staff. On the other hand, it is emerging from the evidence of W.W.1 more particularly Ext. 1 that a settlement was arrived at between the management and the second party union in Form -H of the Act before the labour machinery that the Security Guards would be provided bonus of 8.33% of the minimum wages as per the Bonus Act, 1965. It is also well settled that the educational institution can come under the purview of term "industry" as defined under the Act so far clerical and other staffs other than the teaching staffs are concerned. Therefore, the management No.1 cannot take any excuse to provide bonus to the disputant workman on a pretext of non-application of the Bonus Act to the educational institution. Unless such bonus amount is provided to the outsourcing agency, the employer management No.1 would not be in a position to pay bonus to the disputant workman. Payment of bonus being a mandate of law i.e., the Bonus Act, 1965 (amended) the disputant workman is entitled to receive the minimum bonus as prescribed in the law likewise the minimum wages to which he is entitled to receive under the Minimum Wages Act. In that view of the matter, the disputant workman Sri Dillip Kumar Parida is entitled to receive arrear bonus for the period of his service from 10.3.2010 to 1.2.2016 from his immediate employer management No. 1 and the management No. 2 being the principal employer, hiring the service of the disputant workman from the outsourcing agency, is liable to provide the same amount to the outsourcing agency for its payment to the disputant workman.

8. For the reasons and discussions made above, the management No.1 is directed to take necessary steps for making payment of arrear bonus amount to the disputant workman within two months from the date of Gazette Notification of the Award failing which the disputant workman is entitled to interest @ 8% per annum on the amount from the date of the Award.

Accordingly the reference is answered and Award is passed.

Dictated and corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 587.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक,राष्ट्रीय नमूना सर्वेक्षण कार्यालय (एफओडी), हुबली बैंगलोर, और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सं. 05/2018) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुए थे ।

[सं. एल-42012/19/2018-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 587.—In pursuance of Section 17 of the Industrial Dispute Act, 1947, (14 of 1947) the Central Government hereby publishes the award (Ref. No. 05/2018) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, National Sample Survey Office (FOD), Hubli Bangalore & Others, and their workmen which were received by the Central Government on 07.07.2020.

[No. L-42012/19/2018-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 01ST JULY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 05/2018

I Party	**II Party**
Smt. Nagaratna S Yaragunti, Bankapur Oni, Indiranagar, P.B. Road, Hubli - 580029.	The Director, National Sample Survey Office (FOD), North Karnataka Region, 2nd Floor, Srinath Complex, New Cotton Market, Hubli - 580029.

Appearance

Advocate for I Party : Self

Advocate for II Party : Mr. Sathish B

AWARD

The Central Government vide Order No. L-42012/19/2018-IR(DU) dated 11.04.2018 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of management of National Sample Survey Office in terminating the services of Smt. Nagaratna S Yaragunti, who had worked as a Sweeper since 2010 without break till her termination on 01.05.2017 is fair, just and legal? If not, to what relief the workman is entitled to?"**

1. The claim of the 1st Party workman is, she was working as Sweeper cum Attender with the 2nd Party since 2010 and was illegally refused employment w.e.f 01.05.2017; she has served continuously without break and her work was to clean the entire office and thereafter she used to work as a Attender till 5.30 p.m.; nature of her work is perennial. She was paid monthly salary but below Minimum Wages prescribed by the Government. Vide letter dated 14.03.2017 she requested the 2nd Party to make her permanent; thereafter officials of the 2nd Party started harassing her; on 28.04.2017 she was told that her service will be discontinued from 01.05.2017, before terminating her from service w.e.f. 01.05.2017 she was not issued any notice; no charge sheet is issued and no enquiry was conducted against her. They have not paid retrenchment compensation which is mandatory under Sec 25-F of 'the Act'. Her request for reinstatement went in vain; she has no source of income.

2. The claim is contested by the 2nd Party on the following lines:

She was engaged as Casual Labourer at 2nd Party office for cleaning purpose only on day to day basis. She was not in the Muster Roll; payment were made on weekly/monthly basis; there is no regular post / substantial post on her working, intermittent periods for works of temporary nature; her service is utilised whenever required for works of casual nature; she has not worked 240 days in any of the year, as per the eligibility criteria for conferment of Temporary Status as per DOPT O.M. Dated 10.09.1993; she was also working with other Private firms. The 2nd Party is performing sovereign functions of the State and not carrying on Business/Trade or undertaking manufacture to earn the profit. It is not an Industry; she was not engaged through any formal order; her allegation of termination w.e.f. 01.05.2017 is denied. She worked as Temporary Casual Labourer, hence no question of issuing termination order.

3. To discharge the burden entrusted by the referred issue, 2nd Party examined it's Director who reiterated the counter statement averments and produced 4 documents Ex M-1/O.M. dated 11.12.2015 - guidelines in respect of outsourcing of Cleaning and Sweeping Services and Security Services; Ex M-2/O.M. dated 14.06.2016 issued Ministry of Personnel, Public Grievance and Pensions Department of Personal and Training regarding recruitment of casual workers and persons on daily wages; Ex M-3 O.M dated 27.06.2016 issued by Ministry of Statistics and Programme Implementation regarding recruitment of casual workers and persons on daily wages; Ex M-4/O.M. Dated 09.08.2016/11.08.2016/12.08.2016 issued by Ministry of Statistics and Programme Implementation directing review of the positions in the Office to take appropriate action to

discontinue the services of personnels engaged on daily basis or monthly basis and take action to outsource the services for Cleaning and Sweeping and Security Guards as per the Financial Powers delegated to the Deputy Director Generals and Directors in the Regional Offices and also as per FOD order dated 11.12.2015.

4. The claimant once sent her claim statement through post thereafter did not turn up to pursue her claim.

MW-1 was discharged without cross examination. There was no rebuttal evidence.

5. In the said situation there is no material to appreciate that the 1st Party workman served the 2nd Party continuously in any vacancy or served on temporary basis continuously for 240 days or more in any calendar year preceding 01.05.2017. There is no privity of contract between the parties. On her own showing her termination is not in lieu of any Disciplinary Action, when the 2nd Party has denied her continuous service for 1 year or more there is no obligation on them to comply the procedure contemplated by Sec 25-F of 'the Act'. There is no material to appreciate that she has performed the work of perennial nature against any permanent vacancy. Refusal of employment if any w.e.f. 01.05.2017 cannot be termed as illegal termination for the said reason.

AWARD

The Reference is rejected.

(Dictated to o/s Steno, transcribed by her, corrected and signed by me on 01st July, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 588.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मुख्य कार्यकारी और अध्यक्ष, हेवी वॉटर बोर्ड, मुंबई और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, मुंबई के पंचाट (संदर्भ सं. 38/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.07.2020 को प्राप्त हुए थे।

[सं. एल-42011/102/2017-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 588.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Mumbai, as shown in the Annexure, in the Industrial dispute between the employers in relation to The Chief Executive & Chairman, Heavy Water Board, Mumbai & Others, and their workmen which were received by the Central Government on 15.07.2020.

[No. L-42011/102/2017-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/38 of 2017

EMPLOYERS IN RELATION TO THE MANAGEMENT OF HEAVY WATER BOARD

The Chief Executive & Chairman,
Heavy Water Board, V. S. Bhawan,
Anushakti Nagar,
Mumbai – 400 094.

AND

THEIR WORKMEN

The General Secretary,
Heavy Water Board (Mumbai)
Employees Association,
Anushakti Nagar,
Mumbai – 400 094.

APPEARANCES:

FOR THE EMPLOYER : Mr. P.M. Palshikar, Advocate

FOR THE WORKMEN : Mr. S. N. Mishra, Representative

Mumbai, dated the 6th March, 2020

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/102/2017-IR (DU) dated 29.08.2017. The terms of reference given in the schedule are as follows :

"Whether the charter of demands mentioned in the Annexure 'A & B' appended to the strike notice dated 09.06.2016 issued by the Heavy Water Board (Mumbai) Employees Association against the Management of Heavy Water Boards, Anushaktinagar, Mumbai is just, proper and legal? What relief the Association is entitled to ?

2. After the receipt of the reference, both the parties were served with the notices.

3. As per pursis Ex.13, the second party union has withdrawn the reference. Hence the reference is withdrawn and disposed of. Hence order.

ORDER

Reference is withdrawn and hence disposed of with no order as to costs.

Date: 06.03.2020

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 15 जुलाई, 2020

का.आ. 589.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स निर्देशक, गैस टर्बाइन अनुसंधान प्रतिष्ठान, बैंगलोर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ सं. 55/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 07.07.2020 को प्राप्त हुए थे।

[सं. एल-42012/82/2012-आईआर (डीयू)]

डी. के. हिमांशु, अवर सचिव

New Delhi, the 15th July, 2020

S. O. 589.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 55/2012) of the Central Government Industrial Tribunal cum Labour Court, Bangalore as shown in the Annexure, in the Industrial dispute between the employers in relation to The Director, Gas Turbine Research Establishment, Bangalore & Others, and their workmen which were received by the Central Government on 07.07.2020.

[No. L-42012/82/2012-IR (DU)]

D. K. HIMANSHU, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 02ND JULY, 2020

PRESENT : JUSTICE SMT. RATNAKALA, Presiding Officer

CR 55/2012

I Party	**II Party**
Sh. K.H. Muniyellappa, S/o Late Huchallappa, D.No. 156, Renuka Nagar, Kalkere Varmavu post, Bangalore – 560043.	The Director, Gas Turbine Research Establishment, C.V. Raman Nagar, Bangalore – 560093.

Appearance

Advocate for I Party : Mr. B. D. Kuttappa

Advocate for II Party : Mr. Prakash Rao. K

AWARD

The Central Government vide Order No. L-42012/82/2012-IR(DU) dated 06.12.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute Act, 1947 (for brevity 'the Act' hereafter) referred the following Industrial Dispute for adjudication.

> **"Whether the action of the management of GTRE DRDO, Bangalore in terminating the services of Sh. K. H. Muniyellappa S/o Late Huchellappa w.e.f. October 1990 is legal and justified? If not, what relief the said workman is entitled to?"**

1. The claim of the 1st Party workman is,

he joined the service of the 2nd Party on 29.04.1985 as casual labourer / helper; his name was sponsored by District Employment Exchange Office at Bangalore; he was selected after finding him suitable in the interview by the Selection Committee; he worked at maintenance section of the 2nd Party for 5 years continuously until he was illegally terminated in the month of October 1990; he worked for more than 240 days in each of the calendar years and terminated without any reason and without following the mandatory provisions of the ID Act. Similarly placed workmen selected along with him were discontinued and they raised dispute before this Tribunal and this Tribunal passed Award directing the 2nd Party to reinstate them and they were taken back and they are serving regularly. He is unemployed and is without any source of income.

2. The claim is contested by the 2nd Party on the ground that -

The 2nd Party is a Defence Establishment and it's functions are sovereign in nature. It is responsible for design, development and testing of engines required for usage of Defence Forces; it is not an Industry engaged in commercial/industrial/production activity and is not engaged in economic venture; it is fully undertaken by Government of India.

It is further stated that, the 2nd Party was engaging casual labourers on daily wages to carry out odd and miscellaneous jobs; the engagement was purely casual in nature to cater to the temporary nature of work. Since, the services were no longer required, their engagement were stopped subsequently. The 1st Party workman worked intermittently for 513 days from 1985 to 1990. As per the guidelines of the Ministry of Defence, Government of India dated 31.01.1991, casual labourers who rendered at least 240 days of casual service during each of the two years of service will be eligible for appointment to the post on regular establishment basis, subject to other conditions. The 1st Party did not work minimum stipulated days in any of the block of two years and was not eligible for regular employment.

3. During the course of proceedings, the 1st Party filed an application seeking direction to the 2nd Party to produce his attendance register and the wage register for the period 1985 to 1990. The 2nd Party objected to the application stating that, there was no separate maintaining of attendance register for casual labourers - casual labourers were engaged on the office Orders and they were paid through Central Government Public Fund. No separate wage register was maintained.

4. The 2nd Party to substantiate their case, examined their Administrative Officer/MW-1 and produced documents Ex M-1 to Ex M-4. Ex M-2 is the proceedings of the interview committee dated 07.12.1989 and it is seen from the said document that the 1st Party workman was not successful in getting through. Ex M-3 is the details of number of days of his engagement. The witness was cross examined at length disputing the veracity of the proceedings held as per Ex M-2. There is no rebuttal evidence also.

5. The 2nd Party at the time of argument along with a memo produced a letter issued by Assistant Executive Engineer, BBMP, Horamavu Sub-division, Bangalore 560113 stating that,

> *"Sh. K.H. Muniyellappa working as waterman under equal work for equal pay (super numerory) post from dated 16.01.2007 in the office of Assistant Executive Engineer, Horamavu Sub Division BBMP Bangalore-560113 at Jayanthi Nagar Circle Horamavu, this is for kind information."*

6. It was submitted by Sh. KPR for the 2nd Party that, since the 1st Party workman is employed, the Industrial Dispute raised by him at this length of time shall be rejected. There was no response either admitting or disputing the fact that the 1st Party workman is presently working with the BBMP as waterman in the supernumerary post from 16.01.2007. If his employment as depicted in the above letter issued by Assistant Executive Engineer of BBMP is true and correct, it has to be necessarily inferred that he has raised the dispute by suppressing the material facts of his employment and does not deserve the benefit of the jurisdiction vested with this Tribunal under Sec 11A of 'the Act'. He has not adduced rebuttal evidence hence, the evidence of the 2nd Party that he has not served continuously for more than 240 days in any calendar year and was not selected in interview remains intact. His engagement as a casual labourer was on need basis and having not shown any tangible material that he rendered continuous service as contemplated by Sec 25-B of 'the Act', his disengagement does not amount to 'Retrenchment' as defined Sec 2(oo) of 'the Act'. Consequently, there was no obligation on the 2nd Party to comply with the mandatory procedure contemplated by Sec 25-F of 'the Act'.

7. Though the 2nd Party had raised the contention that it being a Research Institution is not an Industry as defined by Sec 2(j) of 'the Act', said contention is without foundation. Way back in it's Judgement of 'Physical Research Laboratory Vs. K.G. Sharma on 8 April, 1997 LAWS (SC) 1997 4 31' the Apex Court held that Research Institutes, albeit run without profit-motive, are industries.

Still, for the observations made in the preceding Para, the Dispute raised by the workman is without merit.

AWARD

The reference is rejected.

(Dictated to o/s LDC, transcribed by her, corrected and signed by me on 02nd July, 2020)

JUSTICE SMT. RATNAKALA, Presiding Officer

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